MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 8

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to intent to award; the amendment of ARM 2.5.503, 2.5.601, 2.5.602, 2.5.604, 2.5.605, and 2.5.609 pertaining to public notice, competitive sealed bids, competitive sealed proposals, sole source procurement, exigency procurements, and alternative procurement methods; and the repeal of ARM 2.5.302, 2.5.303, 2.5.304, 2.5.305, and 2.5.502 pertaining to requisitions from the agencies to the division, enforcing the contract, contract renewal, completion notification for contracts with performance security, and bid, proposal, and contract performance security	))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 21, 2024, at 3:00 p.m., the Department of Administration will hold a public hearing in Room 161 of the Mitchell Building, at 125 North Roberts Street, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Alternatively, interested parties may attend the public hearing via the Zoom meeting platform or by telephone using the following information:

Join Zoom Meeting:
mt-gov.zoom.us/j/86551741479?pwd=N3lBR2ZDLzFlaGx3MXpEdU9lWlEwZz09
Meeting ID: 865 5174 1479
Password: 907763

-OR-

Dial by Telephone
1-646-558-8656
Meeting ID: 865 5174 1479
Password: 907763

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on May 14, 2024, to advise us of the nature of the accommodation that you need.

Please contact Heather Hardman, Department of Administration, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711; facsimile (406) 841-2930; or email to hhardman@mt.gov.

3. The rule proposed to be adopted is as follows:

NEW RULE I INTENT TO AWARD (1) For all invitations to bid and requests for proposals, the division or state agency shall electronically post an intent to award prior to awarding a contract.

(2) The intent to award shall be posted publicly for no less than seven days to allow for public review and comment. If no public comment is received, the division or state agency may award a contract to the successful bidder or offeror.

(3) If public comment is received, the division or state agency shall review the comments received and determine the impact, if any, on the decision to award a contract.

AUTH: 18-4-221, MCA
IMP: 18-4-303, 18-4-304, 18-4-307, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department has identified changes to rules that will streamline regulation, cut red tape, and simplify rule text as part of Governor Gianforte's Red Tape Relief Initiative. Statements concerning only the internal management of the agency or state government are being removed or repealed and transferred to policies maintained in the state's internal policy manual, the Montana Operations Manual (MOM).

Further, as part of its biennial review of rules required under 2-4-314, MCA, the department identified additional changes included in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation, replacing passive voice with active voice, eliminating outdated references, or updating authority and implementation citations to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority. Other changes are intended to simplify language and reduce wordiness.

Finally, the department proposes to adopt NEW RULE I and to amend ARM 2.5.601 and 2.6.602 to implement Senate Bill 51, enacted by the 2023 Montana Legislature (Chapter 489, Laws of 2023). Senate Bill 51 added a notice of intent to award procedure to provide additional transparency and opportunity for public input in the procurement process and adjusted the timing and manner of other disclosures during procurement.

STATEMENT OF REASONABLE NECESSITY: NEW RULE I provides clarity to agencies and potential vendors regarding how agencies will provide notice of intent to award as required by Senate Bill 51. The new rule also identifies procedures for handling comments, or the absence of comments, received in response to a notice of intent to award.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.5.503 PUBLIC NOTICE (1) through (4) remain the same.

~~(5) Notice of public meetings conducted to evaluate requests for proposals must be posted to the division's web site no less than 72 hours in advance of the meeting.~~

AUTH: 18-4-221, MCA
IMP: 18-4-303, 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to amend ARM 2.5.503 to remove (5), because ARM 2.2.102 already addresses public meeting requirements for the department and procuring agencies should follow their own public meeting requirements when conducting a solicitation under delegated authority.

2.5.601 COMPETITIVE SEALED BIDS AND GENERAL PROVISIONS PERTAINING TO BOTH COMPETITIVE SEALED BIDS AND PROPOSALS

(1) remains the same.

(2) The ~~invitation for bid~~ solicitation shall include the following:

(a) instructions and information to bidders or offerors concerning the bid or proposal submission requirements, including the time and date established for ~~bid opening~~ submission, the ~~address of the office to~~ method by which bids or offers are to be delivered, and any other special information;

(b) and (c) remain the same.

(3) The invitation for bid or request for proposals may incorporate documents by reference if ~~the invitation for bid~~ it specifies where such documents can be obtained.

(4) Where a brand name specification is used in a solicitation, the solicitation shall ~~contain explanatory language~~ explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired, and is not intended to limit or restrict competition. When bidding or proposing an "or equal" product, the burden of persuasion is on the bidder or offeror to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgment for making a final determination of whether a proposed substitution is equal to the brand name specified.

(5) ~~Addenda, if any,~~ If the division or agency decides to amend an invitation for bids or request for proposals, the amendments will be provided to all vendors who received ~~an invitation for bid~~ the solicitation, or notice of the ~~addenda~~ solicitation amendment will be ~~placed~~ provided in the ~~electronic~~ format designated in the solicitation for giving public notice.

(6) ~~Upon receipt of a bid or a facsimile transmission of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place until the time and date set for bid opening. In order to be considered timely, a complete printed bid response must be delivered to the~~

~~specified destination by the specified time.~~ For all invitations for bid and requests for proposals, the division or state agency shall post an intent to award as described in [NEW RULE I].

(7) Bids or proposals shall be ~~opened publicly at~~ submitted on or before the time~~, date, and place~~ and in the manner designated in the ~~invitation for bid~~ solicitation.

(8) The division may ~~request~~ ask state agencies to perform tests or ~~to~~ provide technical expertise to determine product or service acceptability ~~on bids received~~.

(9) through (15) remain the same.

(16) The state may create a roster of contractors to provide supplies or services on an "as needed, if needed" basis. In this situation, contractors have no guarantee that any supplies or services will be purchased by the state. The solicitation document will establish the method to be used to select contractors for the roster.

AUTH: 18-4-221, MCA
IMP: 18-4-303, 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 2.5.601 to clarify which provisions that apply to both competitive sealed bids and competitive sealed proposals. Previously, ARM 2.5.602 referred to ARM 2.5.601, but it was difficult to understand which sections applied only to competitive sealed bids and which applied to both bids and proposals. The word "solicitation" is used to clarify that a requirement or process may apply to either invitations to bid or requests for proposals. The catchphrase is also being updated to clarify the portions of ARM 2.5.601 apply to both competitive sealed bids and proposals. The implementation citation is being updated to add 18-4-304, MCA, because the rule also implements that section.

The department proposes to amend (6) to remove an outdated description of division internal processes and allow that procedure to be defined in MOM policy. The new language in (6) is necessary to inform the reader to consult NEW RULE I for information about the intent to award process for competitive sealed bids and proposals.

The department is proposing to add (16) to clarify that the division or an agency may create a roster of contractors on an as needed, if needed basis by either an invitation for bids or request for proposals. Previously, similar language was found only in ARM 2.5.602(16), which gave the impression that a roster of contractors could only be created using a request for proposals.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) "Competitive sealed proposal" is a procurement option allowing the award to be based upon an evaluation process using stated criteria to arrive at a contract that will be the most advantageous to the state. Competitive sealed proposals shall be solicited through a request for proposals.

(2) Competitive sealed proposals~~, solicited through a request for proposals,~~ may be practical when one or more of the following conditions exist:

(a) through (e) remain the same.

(3) The request for proposals must be prepared and conducted in accordance with ARM 2.5.601, except for provisions of ARM 2.5.601 that expressly apply only to invitations for bid. A request for proposals ~~and~~ must include:

(a) through (4) remain the same.

~~(5) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval from the procurement officer.~~

~~(6) Proposals shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the due date specified in the request for proposals.~~

~~(7)~~(5) After the time established for receipt of proposals, a procurement officer shall open and inspect the proposals for material not available for public inspection pursuant to 18-4-304 and 18-4-308, MCA. The procurement officer shall remove this material and release the remainder of the proposal for public inspection. Offerors submitting a proposal containing a claim of confidentiality pursuant to 18-4-304, MCA, shall include a statement that attests to the offeror's acceptance of the legal and financial responsibility for defending the claim. A claim to shield trade secret material must be made by an offeror's legal counsel using the affidavit form prescribed by the division. The division or purchasing agency is not required to accept an offeror's trade secret claims. An offeror who claims material in its proposal is a trade secret shall provide two versions of all documents containing claimed trade secrets. In one version, all material shall be readable and unredacted. In the other version, all claimed trade secrets must be redacted by the offeror. After complying with 18-4-304(4) and (8), MCA, the division or purchasing agency may publish or provide to the public redacted documents and any proposal documents that do not contain claimed trade secrets.

~~(8)~~(6) For the purpose of conducting discussions, proposals must be initially classified as responsive or nonresponsive.

(a) Proposals may be found nonresponsive at any time during the procurement process if:

(i) any of the required information is not provided;

(ii) the submitted price is found to be excessive or inadequate as measured by criteria stated in the request for proposals; ~~or~~

(iii) the proposal does not conform to the specifications described and required in the request for proposal~~.~~;

(iv) the offeror claims all or significant portions of the offeror's proposal are trade secrets without a proper basis under law or the offeror and the division or purchasing agency are unable to resolve disagreements regarding the offeror's trade secrecy claims before the division or purchasing agency posts an intent to award;

(v) the offeror or proposal fails to comply with procurement laws or policies;

(vi) the offeror or proposal fails to comply with the request for proposal requirements;

(vii) the offeror does not agree to the state's contract requirements after negotiations;

(viii) the offeror fails to provide required financial, insurance, reference, or security information; or

(ix) the offeror fails to demonstrate financial responsibility or an ability to

comply with contract requirements.

(b) remains the same.

(9) through (15) remain the same but are renumbered (7) through (13).

~~(16) The state may create a roster of contractors to provide supplies and/or services on an "as needed, if needed" basis. In this situation, contractors have no guarantee that any supplies or services will be purchased by the state. The solicitation document will establish the method to be used to select contractors for the roster.~~

AUTH: 18-4-221, MCA
IMP: 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: See above the statement of reasonable necessity for ARM 2.5.601 and the general statement of reasonable necessity. The department intends to eliminate former (5) and (6) because they describe requirements and processes that are no longer in use or are more properly defined in the state's internal policy manual, the MOM.

In addition, the department proposes to amend new (5) to update the requirements regarding offerors' trade secrecy claims to reflect current division and agency practices. In addition, Senate Bill 232, enacted by the 2023 Montana Legislature (Chapter 439, Laws of 2023), implemented statutory deadlines for responding to requests for public information. To help the division and agencies meet deadlines for reviewing claims of confidentiality and responding to such requests, it is necessary for offerors to specifically mark and identify claimed trade secrets.

The department proposes to amend new (6) to clarify the process for handling instances where an offeror claims more information is protected than what is recognized under Montana law. Recently, some offerors have erroneously indicated all or a majority of their proposal is considered a trade secret to avoid the effort involved in specifically identifying material that is actually confidential. This can delay the process of reviewing trade secrecy claims and affect the schedule for the solicitation. The other proposed amendments to this section describe additional issues that have previously resulted in proposals being deemed nonresponsive. By listing them here, instead of simply relying on the definition of "nonresponsive," the department intends to make it easier for offerors to identify problems that could result in a proposal being rejected.

The department is proposing to remove (16) and transfer it to ARM 2.5.601, because it applies to both invitations for bids and requests for proposals.

2.5.604 SOLE SOURCE PROCUREMENT (1) through (3) remain the same.

(4) ~~The procurement officer may conduct negotiations, as appropriate, as to price, delivery, and terms.~~ For any requested sole source procurement with a total contract value exceeding $100,000, the division or procuring agency must provide public notice of intent to sole source as provided in ARM 2.5.503. An intent to sole source shall be posted on the division or agency website for 10 business days to allow for public review and comment before the division may approve sole source procurement.

(5) remains the same.

(6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:

(a) through (c) remain the same;

(d) purchase or renewal of maintenance agreements for software or hardware. The purchase or renewal of a software subscription agreement or the addition of new major functional capabilities or services is not considered purchase or renewal of a maintenance agreement for software or hardware and such items cannot be purchased directly by an agency without sole source approval or another approved procurement method; and

(e) remains the same.

(7) ~~If an extension or renewal of a~~ Any modification, extension, or renewal to an existing sole source contract ~~is required,~~ requires the agency ~~shall~~ to provide the division with a new justification form as provided in (5).

AUTH: 18-4-221, MCA
IMP: 18-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: During compliance reviews with agencies and in the regular course of working with agencies, the division has identified sole source procurements as an area where more transparency is needed. The department is proposing to amend ARM 2.5.604 to include a requirement to conduct an intent to sole source process to provide such transparency. The intent to sole source allows the public an opportunity to inform the division or agency about opportunities in the marketplace for conducting a competitive procurement that the division or agency might not have been aware of. It is also possible that public comment may reinforce the need for a sole source procurement, and that information could be used to complete the sole source justification. Further, by requiring that an intent to sole source be posted for 10 business days, the proposed rule will ensure that the division and agency have taken appropriate time to consider whether a sole source procurement is truly the only procurement mechanism appropriate for obtaining the necessary supplies or services.

The department proposes to amend (6) to clarify that software maintenance, which may be purchased directly, does not include renewal of a software subscription agreement. Software maintenance, as defined in ARM 2.5.201, includes "patches, support, or upgrades and minor enhancements allowing the software to continue to perform its functional purposes as originally specified." The term does not apply to renewal of expired or expiring license or subscription agreements. There has been some confusion regarding this issue among purchasing agencies; therefore, the department has determined it is necessary to amend this rule now to eliminate the confusion.

Likewise, there has been some confusion among purchasing agencies regarding when a sole source justification is necessary. Some agencies incorrectly believed they could reuse the sole source approval they obtained when they initially purchased a service or supply when it was time to renew the contract. The department is proposing to amend (7) to clarify that a new sole source justification must be completed and a new sole source approval must be obtained prior to

renewing a contract procured under sole source authority. In many cases, one vendor's success with a novel product or service inspires competitors to provide similar products and services. Thus, while a sole source procurement may have been justified when the initial purchase was made, the justification may not continue to exist when it is time for the initial contract to be renewed.

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of $10,000 or more shall be limited to those supplies or services necessary to meet the exigency, as defined in ARM 2.5.201. An exigency does not exist when:

(a) an agency failed to procure supplies or services before the time they were needed;

(b) an agency failed to timely renew an expiring contract; or

(c) other inaction by the agency created the exigency. [does not follow lead-in language]

(2) ~~The determination as to whether a procurement shall be made as an exigency procurement shall be made by the agency.~~ An agency shall decide whether public exigencies require an exigency procurement. The determination must be in writing and must state the basis for an exigency procurement and for the selection of a particular vendor.

(3) The procedure used shall ~~be selected to assure that~~ ensure the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained.

(4) A record of each exigency procurement shall be made as soon as practicable and shall ~~set forth~~ include:

(a) through (d) remain the same.

AUTH: 18-4-221, MCA
IMP: 18-4-133, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend ARM 2.5.605 to identify situations that are not public exigencies. Under 18-4-133(1), MCA, supplies and services may be procured "in the manner in which the articles are usually bought and sold" when "immediate delivery of articles or performance of service is required by the public exigencies." An exigency purchase, as defined in ARM 2.5.201, is "a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action." During compliance reviews with agencies and in the regular course of working with agencies, the division has discovered that some agencies believe an exigency purchase is justified in instances where they have not planned to allow an appropriate amount of time to complete a competitive procurement. It is necessary to amend ARM 2.5.605 to reinforce the idea, included in the definition of exigency, that purchases made without following normal purchasing procedures should be limited to situations where a sudden event or unforeseeable circumstance requires immediate action.

2.5.609 ALTERNATIVE PROCUREMENT METHODS (1) An agency may request authorization from the division to pursue an alternative procurement method

~~for obtaining a supply or service~~.

(2) If an alternative procurement method is approved, the division shall:

(a) conduct the procurement on behalf of the agency or delegate one-time authority to conduct the procurement on its own;

(b) and (c) remain the same.

AUTH: 18-4-221, 18-4-302, MCA
IMP: 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: The department finds it necessary to amend ARM 2.5.609 to allow the division to decide to delegate authority to agencies to procure through an alternative procurement method where appropriate. While in many cases, the division may be in a position to successfully implement an alternative procurement method, it is necessary to amend the rule to give the division the option of delegating authority to an agency to conduct an alternative procurement in situations where the division's workload does not permit the division to conduct the procurement on behalf of the agency or where the agency is in a better position to manage an alternative procurement process due to the agency's expertise.

5. The department proposes to repeal the following rules:

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

AUTH: 18-4-221, MCA
IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: Under 2-4-102(11), MCA, administrative rules are statements of general applicability that implement, interpret, or prescribe law or policy. The administrative rules the department proposes to repeal are statements concerning only the internal management of government and are being transferred to MOM policy to decrease unnecessary text in the department's administrative rules.

2.5.303 ENFORCING THE CONTRACT

AUTH: 18-4-221, MCA
IMP: 18-4-221, MCA

2.5.304 CONTRACT RENEWAL

AUTH: 18-4-221, MCA
IMP: 18-4-313, MCA

2.5.305 COMPLETION NOTIFICATION FOR CONTRACTS WITH PERFORMANCE SECURITY

AUTH: 18-4-221, 18-4-312, MCA
IMP: 18-4-312, MCA

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

AUTH: 18-4-221, 18-4-312, MCA
IMP: 18-1-201, 18-4-312, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the person listed in paragraph two above. Comments must be received no later than 5:00 p.m., May 24, 2024.

7. Katy Brandis, Department of Administration, has been designated to preside over and conduct this hearing.

8. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph two above; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on January 25, 2024.

11. The department has determined that under 2-4-111, MCA, the proposed adoption, amendment, and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to local government public meeting recordings	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 21, 2024, at 9:00 a.m., the Department of Administration will hold a public hearing in Room 161 of the Mitchell Building, at 125 North Roberts Street, Helena, Montana, to consider the proposed adoption of the above-stated rule. Alternatively, interested parties may attend the public hearing via the Zoom meeting platform or by telephone using the following information:

Join Zoom Meeting:
mt-gov.zoom.us/j/89803091401?pwd=eHAvOUFubzFhUzd0TDhnVVNrQklPdz09
Meeting ID: 898 0309 1401
Password: 270835

-OR -

Dial by Telephone
1-646-558-8656
Meeting ID: 898 0309 1401
Password: 270835

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on May 14, 2024, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Department of Administration, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711; facsimile (406) 841-2930; or e-mail to hhardman@mt.gov.

3. The rule proposed to be adopted is as follows:

NEW RULE I LOCAL GOVERNMENT PUBLIC MEETING RECORDINGS

(1) This rule implements 2-3-214, MCA, by providing guidance for creating, storing, and publishing audio and video recordings of local government public meetings.

(2) This rule provides technical advice but is not binding on local government entities. It is not legal advice. Whether meetings should be public meetings or should be recorded are considerations beyond the scope of this rule. Local government entities should consult 2-3-214, MCA, for more information about how and when meetings should be recorded.

(3) How should we record video during a meeting?

(a) To record video, you will need cameras. Ensure the camera setup covers all meeting participants adequately. Cameras should have a minimum resolution of 720 pixels (HD) and a minimum frame rate of 30 frames per second (fps) for smooth video.

(4) What about recording content or presentations from a computer during a meeting?

(a) You can record content from a computer by using an application or process that records what is displayed on the computer screen. The recommended minimum resolution for this content is 720 pixels, and the frame rate should be at least 15 fps.

(5) What format should we use for recording and video-on-demand?

(a) When recording meetings, save video in MP4 format and audio in MP3 format. This will make it easier to share and view the recordings.

(6) What should we consider regarding a room's acoustics?

(a) Think about how sound behaves in the room. Here are some considerations:

(i) The ambient or background noise level in the room should be less than 30 decibels (dB) to avoid interference.

(ii) Common issues in noisy rooms are echoes and hollow-sounding audio caused by solid surfaces, high ceilings, HVAC (heating, ventilation, and air conditioning) noise, and electronic noise.

(iii) To improve acoustics, you can use acoustic-absorbing soundboards, curtains, ceiling tiles, and unidirectional microphones.

(7) Where should we store recordings?

(a) The official copy of the recordings should be saved in a cloud environment maintained by your organization and accessible by more than one person.

AUTH: 2-17-518, MCA
IMP: 2-3-214, MCA

STATEMENT OF REASONABLE NECESSITY: The 2023 Montana Legislature enacted Chapter 741 (House Bill 890) which provides increased transparency and accountability in government by requiring certain government entities to record their public meetings and to make the recordings available online to the public. The department was required to adopt administrative rules to provide technical guidance and best practices for local government entities subject to 2-3-214, MCA.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the person listed in 2 above. Comments must be received no later than 5:00 p.m., May 24, 2024.

5. Katy Brandis, Department of Administration, has been designated to preside over and conduct this hearing.

6. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in 2 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor was contacted by email on April 1, 2024.

9. The department has determined that under 2-4-111, MCA, the proposed adoption of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 16, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3502 pertaining to the Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement and ARM 2.43.5102 pertaining to the 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 6, 2024, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 5:00 p.m. on May 17, 2024, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND FIXED FUND INVESTMENT POLICY STATEMENT (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~February 10, 2022~~ April 11, 2024. The Investment Policy Statement provides investment guidelines for the defined contribution plan, a long-term retirement-savings vehicle that permits participants to invest employer and participant contributions on a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND FIXED FUND INVESTMENT POLICY STATEMENT (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation) Investment Policy Statement approved by the board on ~~February 10, 2022~~ April 11, 2024. The Investment Policy Statement provides investment guidelines for the 457(b) deferred compensation plan, a supplemental retirement-savings vehicle that permits participants to invest on either a pre-tax or a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASONABLE NECESSITY: After a multi-year process of analyzing the investment structure and options offered in both the State of Montana 401(a) Defined Contribution Plan (DCRP) and 457(b) Deferred Compensation Plan (457 Plan), the Montana Public Employees' Retirement Board, in conjunction with the Employee Investment Advisory Council and third-party investment consultants, implemented significant changes to the investment alternatives for both plans. Those changes were implemented in January of 2024, and the amendments to the investment policy statements for each plan reflect the new investment categories available to participants in those plans.

Because the board adopts the DCRP and 457 Plan investment policy statements by reference, 2-4-307(4), MCA requires that subsequent changes to each document also be adopted by reference following the rulemaking procedure required by the Montana Administrative Procedure Act. It is therefore necessary to amend the rules that adopt each investment policy statement to indicate the version being adopted by reference.

The investment policy statements are available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., May 24, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., May 24, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,601 persons based on approximately 6,089 participants in the Defined Contribution Plan and 9,917 participants in the 457(b) Deferred Compensation Plan as of June 30, 2023, for a total of 16,006.

7. The Montana Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Montana Public Employee Retirement Administration.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State April 16, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.2105 pertaining to the basic period of service, ARM 2.43.2109 pertaining to receipt of service credit on or after termination of employment, and ARM 2.43.2110 pertaining to calculation of highest average compensation or final average compensation	)))))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 6, 2024, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration (MPERA) no later than 5:00 p.m. on May 17, 2024, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.43.2105 BASIC PERIOD OF SERVICE (1) remains the same.

(a) Except as otherwise specified by rule or statute, 160 hours of service ~~credit~~ or 240 hours of service in a three-paycheck month for members who are paid biweekly will equal one month of service credit, regardless of the calendar period during which the service credit was earned.

(b) through (4) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-701, 19-3-108, 19-3-904, 19-5-502, 19-6-502, 19-7-101, 19-7-503, 19-8-101, 19-8-603, 19-9-804, 19-13-704, MCA

REASONABLE NECESSITY: Because service credit is recorded to an individual member's account in arrears at the time that mandatory payroll contributions are made, proper recording and allocation of that service credit requires that an anomaly resulting from biweekly pay–two months per year where employers who pay their

employees on a biweekly basis report three pay periods to MPERA–be accounted for in the number of reported hours that constitute the basic period of service.

2.43.2109 RECEIPT OF SERVICE CREDIT ON OR AFTER TERMINATION OF EMPLOYMENT (1) A member terminating employment shall receive service credit for lump sum payments for which required contributions have been made of severance pay or paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave, received in the month following termination of employment unless the member elects to retire effective that month. ~~No member can receive both~~ A member may not receive service credit for lump-sum payments and a retirement benefit for the same month.

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

REASONABLE NECESSITY: The first proposed amendment to this rule clarifies that consistent with the definition of "service credit" at 19-2-303(47), MCA, service credit for lump-sum payments after termination of employment is only awarded for such payments when required contributions are made. This distinction is necessary because many retiring members elect to roll their unused sick and annual leave into a 26 U.S.C. § 501(c)(9) voluntary employees' beneficiary association health reimbursement account (VEBA), which are exempt from retirement contributions and other payroll taxes. Accordingly, service credit cannot be awarded for unused sick and annual leave when it is rolled into a VEBA account because required employer and employee contributions are not paid on those amounts.

The second proposed amendment to this rule merely clarifies that the existing prohibition on receiving service credit and a retirement benefit in the same month applies only to lump sum payments and not to service credit for hours worked in the month prior to termination of employment but credited to the member's account in arrears when employer payroll reports are received by MPERA.

2.43.2110 CALCULATION OF HIGHEST AVERAGE COMPENSATION WITH LUMP-SUM PAYMENTS (1) For applicable systems, lump-sum payments made upon termination of employment and for which required contributions have been made for paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave may be included in the calculation of a member's highest average compensation (HAC) by replacing lower consecutive compensation months with the same number of higher consecutive compensation months.

(2) and (3) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-2-506, 19-2-1005, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-13-104, MCA

REASONABLE NECESSITY: This clarification is proposed for the same reason as that to ARM 2.43.2109 in that definitions of "compensation" in each of the MPERA-administered retirement systems tie that definition to required employer and employee contributions. When retiring members elect to roll their unused sick and annual leave into a 26 U.S.C. § 501(c)(9) VEBA account, employer and employee contributions on those amounts are not received and cannot be utilized for the calculation of highest average compensation.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., May 24, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., May 24, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,601 persons based on approximately 6,089 participants in the Defined Contribution Plan and 9,917 participants in the 457(b) Deferred Compensation Plan as of June 30, 2023 for a total of 16,006.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State April 16, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of NEW RULE I pertaining to Pharmacy Benefit Manager Maximum Allowable Cost Appeals	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 16, 2024, at 9:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (commissioner or CSI) will hold a public hearing in the basement conference room of CSI, at 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on May 7, 2024, to advise us of the nature of the accommodation that you need. Please contact Laura Shirtliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. Section 33-1-313, MCA, provides the commissioner with the authority to "make reasonable rules necessary for or as an aid to the effective administration of any provision of [the Montana Insurance Code]." Section 33-22-173(1)(a), MCA, provides that a pharmacy benefit manager (PBM) must provide to a pharmacy or pharmacy services administrative organization (PSAO) "a procedure by which a pharmacy or a pharmacy services administrative organization may appeal the price of a drug or drugs on the maximum allowable cost list."

4. In 2023, the Montana Legislature passed HB 156, which was signed into law by the Governor on April 19, 2023. HB 156 amended 33-22-173(1)(a), MCA, to clarify that PBMs' duties to pharmacies, and pharmacies' rights in dealing with PBMs, apply even when pharmacies choose to engage with PBMs collectively through a PSAO as a representative organization.

5. The rule proposed to be adopted is as follows:

NEW RULE I BATCH APPEAL PROCESS (1) A pharmacy benefit manager's appeals procedure described in 33-22-173, MCA, must allow for the submission of appeals received from a pharmacy or a pharmacy services administrative organization as part of a batch or group of appeals.

AUTH: 33-1-313, MCA
IMP: 33-22-173, MCA

6. REASON: CSI has received numerous complaints from pharmacies and PSAOs that some PBMs do not accept maximum allowable cost (MAC) appeals in batch format but require such appeals to be submitted one at a time through a portal or similar online interface. However, CSI also learned that these PBMs have the capability to process, and do in fact process, such batch appeals in other states. This process is not made available to pharmacies or PSAOs in Montana. Pharmacies and PSAOs have stated to CSI that they have been discouraged from filing MAC appeals because entering appeals one by one is an onerous, time-consuming process for them.

Section 33-22-173(1)(a), MCA, requires PBMS to provide a MAC appeal process for a pharmacy or PSAO to appeal "the price of a drug **or drugs** on the maximum allowable cost list." (emphasis added). If the process was meant to be constrained to individual appeals of a single drug on a one-at-a-time basis, the addition of the plural modifier after "a drug" would be unnecessary. The proposed rule helps clarify existing law and the relative obligations of the entities involved.

Further, PSAOs inherently involve multiple stakeholders and therefore multiple claims. PSAOs represent multiple pharmacies, some of whom raise complaints to the PSAO about MAC pricing of the same drug or similar drugs. Because PSAOs inherently involve multiple pharmacies and therefore multiple claims, a procedure that does not account for batch submissions is inherently deficient. Clarifying the legal obligations of PBMs to require them to allow pharmacies and PSAOs in Montana to submit MAC appeals in batch format, as PBMs already allow in other states, will ensure the efficient processing of MAC appeals.

In light of the addition of PSAOs to the provisions in 33-22-173, MCA, to allow orderly submission of appeals, and to clarify the requirements of this provision, the commissioner believes this new rule is necessary for, and an aid to, the effective administration of the statutory provision above.

7. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laura Shirtliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800 332 6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov., and must be received no later than 5:00 p.m., May 24, 2024.

8. Andrew Cziok, CSI legal counsel, has been designated to preside over and conduct this hearing.

9. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to

the contact person in paragraph 7 or may be made by completing a request form at any rules hearing held by CSI.

10. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on April 15, 2024.

12. With regard to the requirements of 2-4-111, MCA, CSI has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Andrew Cziok
Andrew Cziok
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State on April 16, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and NEW RULE II, the amendment of ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, 17.30.715, and 17.30.1304, the repeal of ARM 17.30.660 and 17.30.1388, and the adoption of Circular DEQ-15 pertaining to translation of narrative nutrient standards and implementation of the Adaptive Management Program	))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL (WATER QUALITY)

TO: All Concerned Persons

1. On June 10, 2024, at 10:00 a.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

https://mt-gov.zoom.us/j/86122594706?pwd=T0crdWxwUTVsZlQ0Nk5EeTU1OVkxZz09
Passcode: 362275
Or One tap mobile :
+12063379723,,86122594706#,,,,*362275# US (Seattle)
+12133388477,,86122594706#,,,,*362275# US (Los Angeles)
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 861 2259 4706
Passcode: 362275
International numbers available: https://mt-gov.zoom.us/u/kcyJzehg30

Or an H.323/SIP room system:
H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)
Meeting ID: 861 2259 4706
Passcode: 362275
SIP: 86122594706@zoomcrc.com

Passcode: 362275

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on June 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-434@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I TRANSLATION OF NARRATIVE NUTRIENT STANDARDS

(1) The narrative standard that applies to nutrients is found at ARM 17.30.637(1)(e). The department translates the narrative standards at ARM 17.30.637(1)(e) as provided in Part I of Department Circular DEQ-15 (March 2024 edition).

(2) The department adopts and incorporates by reference Department Circular DEQ-15, entitled "Translation of Narrative Nutrient Standards and Implementation of the Adaptive Management Program" (March 2024 edition), which provides procedures and requirements for the translation of narrative nutrient standards and implementation of the Adaptive Management Program. Copies of Department Circular DEQ-15 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, 75-5-321, MCA
IMP: 75-5-301, 75-5-321, MCA

REASON: The 67th Montana Legislature enacted Senate Bill 358, Chapter 342, Laws of 2021 (codified, in part, at 75-5-321, MCA), which requires the department to adopt rules related to narrative nutrient standards in consultation with the Nutrient Work Group, an advisory group that advises the department on nutrient standards, the implementation of nutrient standards, and associated economic impacts. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. NEW RULE I is necessary in order to fulfill Senate Bill 358 requirements to adopt rules related to narrative nutrient standards that identify appropriate response variables affected by nutrients–along with impact thresholds for each response variable–in accordance with the beneficial uses of state surface waters. NEW RULE I is also necessary to ensure narrative nutrient standards are translated consistently across department water programs. NEW RULE I(1) specifies that narrative nutrient standards are found at ARM 17.30.637(1)(e) and must be translated as provided in new Department Circular DEQ-15. NEW RULE I(2) adopts and incorporates by reference new Department Circular DEQ-15.

Part I of Circular DEQ-15 provides narrative nutrient standards translators comprised of nutrient causal and instream response variable parameters applicable

to different beneficial uses, regions, and waterbodies. The translators provide impact thresholds for each parameter in accordance with the applicable waterbody's beneficial uses. Parameters listed in Circular DEQ-15 must be measured in order to translate the narrative nutrient standards and are applicable to wadeable streams, medium rivers, and large rivers. Special ecological considerations and exceptions are also described, to ensure that response variables are applied in the most appropriate manner. Part I of Circular DEQ-15 provides procedures for evaluating collected data (i.e., nutrient concentrations and response variables) to determine if beneficial uses are protected and narrative nutrient standards are achieved. These weight-of-evidence procedures give greater weight to the biologically based response variables. See also, reasons specified below (ARM 17.30.619).

Part I of Circular DEQ-15 provides necessary details and procedures for translating the narrative nutrient standards at ARM 17.30.637(1)(e) into actionable waterbody assessments and MPDES permit limits. The translation process is complex due to the variable nature of waterbodies across Montana's landscape. In Montana, streams and rivers have different sensitivities to nutrients (i.e., total nitrogen and total phosphorus) depending on their size, slope, location in the state, etc. For example, in Part I, different impact thresholds apply to the same response variable (Beck's Biotic Index version 3, a biological index based on aquatic insects) depending on whether a stream is high gradient or low gradient. Part I also provides (a) allowable exceedance frequencies for the response and the causal (i.e., total nitrogen and total phosphorus) variables, (b) region-specific decision tables–each comprising multiple data types–ensuring consistent application of the narrative standards, (c) consideration for effects on response variables from environmental factors not related to total nitrogen and total phosphorus, (d) methods for applying nondegradation, and other requirements.

It would be cumbersome, expensive, and otherwise inexpedient to include the text of Circular DEQ-15 in the Montana Administrative Register. The information and requirements contained in Circular DEQ-15 are too lengthy and complex to be included directly in rule; therefore, the incorporation by reference of a new department circular is appropriate.

The department considered the economics of waste treatment and prevention during this transition for nutrient standards and throughout the development of NEW RULE I and NEW RULE II. Since Senate Bill 358 was passed, the department met 40 times with the Nutrient Work Group which advises the department on nutrient standards implementation and associated economics, and additionally consulted with individual stakeholders. As a result, consideration of the economics of waste treatment and prevention for narrative nutrient standards was made in the formulation of NEW RULE I and Circular DEQ-15. For instance, the narrative nutrient standards translators provided in Part I of Circular DEQ-15 indicate the standard is met when the biological response variables are met, even if stringent total nitrogen and total phosphorus thresholds are exceeded; this avoids additional costly nutrient reductions if they are not necessary to protect beneficial uses. Consideration of the economics of waste treatment and prevention for NEW RULE I are further addressed via adoption of NEW RULE II, which describes a new adaptive management program (see below). The Adaptive Management Program allows for time and/or cost considerations to incrementally achieve narrative nutrient standards

and avoid costly facility upgrades if other watershed approaches are adequate to protect beneficial uses. In addition to the Adaptive Management Program, other existing MPDES permit compliance options remain which also allow for time and/or cost considerations, for example, variances based on substantial and widespread economic impacts and traditional compliance schedules. See also reasons below (NEW RULE II).

NEW RULE II IMPLEMENTATION OF THE ADAPTIVE MANAGEMENT PROGRAM FOR NARRATIVE NUTRIENT STANDARDS (1) Any person who applies for or holds an MPDES permit issued pursuant to ARM Title 17, chapter 30, subchapter 13 may choose to enter the adaptive management program to achieve nutrient standards and to address nutrients in a specific watershed. To enter the Adaptive Management Program, the owner or operator of a point source must provide an Adaptive Management Plan (AMP) to the department for review and approval.

(2) MPDES permits shall include limitations and conditions consistent with the assumptions and elements of department-approved AMPs. Related MPDES permit limitations and conditions must be derived to achieve narrative nutrient standards as provided in [NEW RULE I].

(3) Adaptive management requirements for wadeable streams and medium rivers.

(a) The AMP must contain, at a minimum, the following:

(i) monthly effluent monitoring for total phosphorus (TP) and total nitrogen (TN) concentrations;

(ii) a monitoring plan for assessing near field response variables and causal variables downstream and upstream of the facility, consistent with Department Circular DEQ-15;

(iii) a plan for examining those pollutant minimization activities that have the potential to reduce nutrient concentrations in the effluent and watershed, such as:

(A) documentation, to be included in the Operations and Maintenance Manual, of process control strategies identified and implemented through optimization of the existing wastewater treatment facility;

(B) training of operations staff in advanced operational strategies;

(C) minor changes to infrastructure to complement and further advance operational strategies; and

(D) implementation of any pollutant trading, nutrient reduction activities, or the reuse of effluent, identified for potential implementation in the AMP;

(iv) documentation of any nutrient reduction activities implemented by the permittee in the watershed; and

(v) a plan for annual reporting to the department. The annual report must be submitted to the department by March 31 of each year and shall include, at a minimum:

(A) a description of any deviations from the AMP, and proposed corrective actions;

(B) a summary of near field monitoring data;

(C) a description of any facility upgrades and/or reductions achieved in nutrient effluent concentrations resulting from pollutant minimization activities; and

(D) a description of actions to further reduce effluent and watershed nutrient concentrations proposed for implementation in the current year.

(b) Before an AMP is approved by the department, and as necessary thereafter, the department shall determine if prioritization of phosphorus reduction is appropriate for both the point source and the receiving waterbody. To determine if it is appropriate to prioritize phosphorus reductions from a point source and in a receiving water body, the department may consider:

(i) existing controls on point and nonpoint sources of pollution;

(ii) the presence and variability of the pollutant(s) in the effluent;

(iii) dilution of the effluent in the receiving water, if appropriate;

(iv) monitoring and assessment information for the receiving waterbody collected by the department or the permittee;

(v) whether phosphorus or nitrogen limits plant and algal growth in the waterbody;

(vi) the ratio of nitrogen to phosphorus in the effluent and instream; and

(vii) any other credible, pertinent data available, including data provided in the AMP.

(c) If the department determines prioritization of phosphorus reduction is appropriate under (3)(b), then the department shall develop and implement TP effluent limits in accordance with [NEW RULE I]. TP effluent limits apply during a growing season as provided in Department Circular DEQ-15, unless a lake or reservoir is affected by the point source, or another downstream use requires protection in which case the limits may apply year-round.

(d) The department may find, based on TP reductions required under (3)(c), associated water quality and response variable monitoring, or other credible data, that the narrative nutrient standards in [NEW RULE I] are met.

(e) If the department concludes under (3)(b) and (c) that the prioritization or limitation of phosphorus alone is not appropriate and that a discharge causes, has reasonable potential to cause, or contributes to an in-stream excursion above the narrative nutrient standards in [NEW RULE I], then the department shall:

(i) develop effluent limits for TN and/or TP in accordance with [NEW RULE I] and consistent with the assumptions and elements of the department-approved AMP under (3)(a); and

(ii) require a permittee or multiple permittees who have chosen to enter into the adaptive management program to develop and include in their AMP a watershed plan describing how nutrients may be reduced in the watershed. To achieve the effluent limits developed under (e)(i), the watershed plan must:

(A) identify and quantify, to the extent feasible, all major sources of nutrient contributions in the watershed in which the facility is located;

(B) identify all partners that will assist in implementing the nutrient reductions including each partner's level of support;

(C) document action items for the reduction of nutrients in the watershed and specific goals for reductions including expected timelines to achieve the reductions and anticipated load reduction based on sound scientific and engineering practices;

(D) demonstrate the ability to fund the watershed plan either individually, or in conjunction with other permittees and nonpoint sources, or other partners, including municipal and county governments, in the watershed;

(E) if partners are used to implement nutrient reduction actions in lieu of permittees, the watershed plan must include written agreements, enforceable by the permittee, reflecting commitments by partners to implement nutrient reduction actions and must identify the period of commitment;

(F) include continued or expanded monitoring of response variables and water quality as performance indicators to determine if the plan is effective in achieving compliance with narrative nutrient standards;

(G) identify the timeframes for completing and submitting each component of the watershed plan under (3)(e)(ii)(A) through (F);

(H) be submitted to the department annually by March 31, along with the annual report in (3)(a)(v), documenting progress and effectiveness of the watershed plan;

(I) be approved by the department; and

(J) in addition to this rule, be subject to requirements contained in Department Circular DEQ-15.

(f) Compliance with the narrative nutrient standards shall be determined at a point or points downstream of the permitted facility established consistent with the requirements in Department Circular DEQ-15.

(4) Adaptive management requirements for large rivers. The AMP must meet the requirements in (3)(a) and, as appropriate, additional requirements in (4)(a).

(a) The department or permittee(s) may develop a mechanistic water quality model for a large river. A calibrated and validated model may be used to derive phosphorus limits for use in MPDES permits that achieve narrative nutrient standards and achieve other applicable water quality standards related to nutrients (dissolved oxygen and pH) along the modeled reach. Permittee-developed mechanistic models must be documented in the AMP. Based on modeling, MPDES permit limits will be allocated considering each facility's relative load, its current treatment for nutrients, estimated cost for projected facility upgrades, the limits of technology, and other considerations as appropriate.

(b) For large rivers where a model has not been developed, the department shall derive MPDES permit limits for phosphorus and/or nitrogen, where necessary, based on best available information regarding the protection of beneficial uses, achieving narrative nutrient standards, and achieving other applicable water quality standards related to nutrients (dissolved oxygen and pH).

(c) TP effluent limits apply during a growing season as provided in Department Circular DEQ-15, unless a lake or reservoir is affected by the point source(s) or another downstream use requires protection in which case the limits may apply year-round.

(d) The nutrient reductions required under (4)(a) and (4)(b) will be evaluated using data collected in each river by the department and/or permittee(s) to confirm that beneficial uses are protected, applicable water quality standards are achieved, and to determine if further reductions for phosphorus and/or nitrogen are needed. Sampling methods must be documented in the AMP consistent with requirements in Department Circular DEQ-15.

(e) A permittee or multiple permittees who have chosen to enter the adaptive management program shall develop a watershed plan for the reduction of nutrients

in the watershed if, based on data and information in (4)(a) and/or updated modeling, the department concludes that phosphorus control alone is insufficient to protect beneficial uses and if additional nutrient controls are needed to comply with applicable water quality standards. The watershed plan must:

(i) identify and quantify, to the extent feasible, all sources of nutrient contributions in the watershed in which the facility or facilities are located;

(ii) identify all partners that will assist in implementing the nutrient reductions including each partner's level of support;

(iii) document action items for the reduction of nutrients in the watershed and specific goals for reductions including expected timelines to achieve the reductions and an anticipated load reduction based on sound scientific and engineering practices;

(iv) demonstrate the ability to fund the watershed plan either individually, or in conjunction with other permittees and nonpoint sources, or other partners, including municipal and county governments, in the watershed;

(v) if partners are used to implement nutrient reduction actions in lieu of permittees, the watershed plan must include written agreements, enforceable by the permittee, reflecting commitments by partners to implement nutrient reduction actions and must identify the period of commitment;

(vi) include continued or expanded monitoring of the response variables as performance indicators to determine whether the plan is effective in achieving compliance with the narrative nutrient standards;

(vii) identify the timeframes for completing and submitting each component of the watershed plan under (4)(e)(i) through (vi);

(viii) be submitted to the department annually by March 31, along with an annual report documenting progress and effectiveness of the watershed plan;

(ix) be approved by the department; and

(x) in addition to this rule, be subject to requirements contained in Department Circular DEQ-15.

(f) Compliance with the narrative nutrient standards, and other applicable water quality standards per (4)(a) and (b), shall be determined at a point or points downstream of the facility or facilities established consistent with the requirements in Department Circular DEQ-15.

(5) A permittee under the adaptive management program is not precluded from pursuing, at any time, other regulatory compliance options including, but not limited to variances, compliance schedules, reuse, trading, recharge, land application, or authorizations to degrade.

(6) The department adopts and incorporates by reference Department Circular DEQ-15, entitled "Translation of Narrative Nutrient Standards and Implementation of the Adaptive Management Program" (March 2024 edition), which provides procedures and requirements for the translation of narrative nutrient standards and the implementation of the adaptive management program. Copies of Department Circular DEQ-15 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-321, 75-5-401, 75-5-402, MCA
IMP: 75-5-321, 75-5-401, 75-5-402, MCA

REASON: The 67th Montana Legislature enacted Senate Bill 358, Chapter 342, Laws of 2021 (codified, in part, at 75-5-321, MCA), which requires the department to adopt rules related to narrative nutrient standards in consultation with the Nutrient Work Group, an advisory group that advises the department on nutrient standards, the implementation of nutrient standards, and associated economic impacts. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. NEW RULE II is necessary to fulfill Senate Bill 358 requirements to adopt rules which provide for the development of an adaptive management program. Per Senate Bill 358, the adaptive management program (a) provides for an incremental watershed approach for protecting and maintaining water quality, (b) reasonably balances all factors impacting a waterbody, and (c) prioritizes the minimization of phosphorus while taking into account site-specific conditions. NEW RULE II describes the implementation of the adaptive management program within the Montana Pollutant Discharge Elimination System (MPDES) permitting program and adopts and incorporates by reference Department Circular DEQ-15.

Permittees are not required to enter the adaptive management program in order to comply with narrative nutrient standards; entry into the program is optional. Other options for compliance include, for example, water quality standards variances (note that other compliance options have separate rules not addressed by NEW RULE II). Overall, NEW RULE II provides a means by which the narrative nutrient standards in NEW RULE I can be achieved by MPDES permittees incrementally. This will allow for the most cost-effective and efficient means of meeting the standards to be tried and then evaluated. At the same time, more will be learned about the biological response in each affected watershed–further enhancing the ability to make sound, scientifically based nutrient management decisions. This step-by-step approach ensures best use of financial and other resources for the purpose of meeting the narrative nutrient standards over time. See also reasons for NEW RULE I.

NEW RULE II(1) provides that owners or operators of point sources that apply for or hold an MPDES permit may choose to enter the Adaptive Management Program. To participate in the program, NEW RULE II(1) also provides that owners and operators of point sources (i.e., permittees) must provide an Adaptive Management Plan (AMP) to the department for review and approval.

NEW RULE II(2) enables MPDES permits to include limitations and conditions consistent with a department-approved AMP and requires that any related MPDES permit limitations and conditions must be derived to achieve narrative nutrient standards.

NEW RULE II(3) and (4) establish detailed AMP requirements for wadeable streams, medium rivers, and large rivers. These AMP rules include provisions that allow for the prioritization of phosphorus reduction (where appropriate), monitoring and reporting requirements for response variables affected by nutrients and associated impact thresholds, requirements for watershed plans designed to consider and balance factors impacting water quality, partner participation requirements, including the enforceability requirements of related partnership agreements, and provisions that specify nutrient standards compliance will be

determined at a point or points downstream of the facility. These rules are necessary to allow the adaptive management program to focus on a watershed approach when addressing nutrient impacts.

NEW RULE II(5) explains that permittees may choose to discontinue their participation in the adaptive management program and pursue other authorized regulatory compliance options. This provision is important to ensure that permittees continue to have the full slate of regulatory options available to them, particularly if continued participation in the adaptive management program is no longer feasible or necessary and other compliance options are more suitable to comply with nutrient standards. In most cases, such a change would need to be occasioned through a permit renewal or modification.

NEW RULE II(6) adopts and incorporates by reference Circular DEQ-15, which contains details on the adaptive management program's requirements and procedures for addressing nutrients in a specific watershed. Part II of Department Circular DEQ-15 contains additional details on requirements–for both the department and permittee participants–for implementing the Adaptive Management Program. Circular DEQ-15 also provides important definitions related to implementing the program.

The adaptive management program needed additional detail beyond what is provided in NEW RULE II if it were to be successfully implemented. This is due, in part, to the fact that the adaptive management program will function as a longer term compliance schedule that requires considerable watershed monitoring and reporting. Part II of Circular DEQ-15 is necessary to provide a higher level of detail concerning the implementation of the adaptive management program, including: (a) program eligibility requirements, (b) requirements for cases where a point source discharge is direct to a lake or reservoir, (c) types of sampling sites and suggestions for their placement in a watershed in order to comply with an adaptive management plan, (d) requirements for mechanistic water quality modeling of large rivers, (e) integration of the adaptive management program and the total maximum daily load program, among other things.

It would be cumbersome, expensive, and otherwise inexpedient to include the text of Circular DEQ-15 in the register. The information and requirements contained in Circular DEQ-15 are too lengthy and complex to be included directly in rule; therefore, the incorporation by reference of a new department circular is appropriate.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to provide fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. The types of fees provided under this rule are:

(a) remains the same.

(b) application fees for non-storm water general permits (Schedule ~~I~~I.B);

(c) application fees for storm water general permits (Schedule ~~I~~I.C);

(d) application fees for other activities (Schedule ~~I~~I.D);

(e) and (f) remain the same.

(g) annual fees for non-storm water permits (Schedule III.B); ~~and~~

(h) annual fees for storm water general permits (Schedule III.C)~~.~~; and

(i) annual fees for adaptive management program participation (Schedule III.D).

(2) through (5) remain the same.

(6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, are set forth below as Schedules I.A, I.B, I.C, and I.D. Fees must be paid in full at the time of submission of the application. For new applications under Schedule I.A, the annual fee from Schedule III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B and I.C, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) through (h) remain the same.

[Schedules I.A and I.B remain the same.]

(i) through (n) remain the same.

[Schedule I.C remains the same.]

(o) remains the same.

(p) The authorization fee for individual MPDES permittees who elect to participate in the adaptive management program for implementing nutrient standards in Schedule I.D is assessed upon submission of an adaptive management plan under [NEW RULE II] for each 5-year permit cycle the permittee is eligible for participation in the adaptive management program.

Schedule I.D Application Fee for Other Activities

Category	Amount
Short-term water quality standard, turbidity "318 authorization"	$ 250
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	250
Federal Clean Water Act section 401 certification	See ARM 17.30.201(6)(o)
Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA	2,000
Authorization for adaptive management program participation pursuant to [NEW RULE II]	5,000
Major modification	Renewal fee from Schedule I.A
Minor modification, includes transfer of ownership	500
Resubmitted application fee	500
Administrative processing fee	500

(7) remains the same.

[Schedule II remains the same.]

(8) and (8)(a) remain the same.

[Schedules III.A and III.B remain the same.]

(b) through (d) remain the same.

[Schedule III.C remains the same.]

(e) through (11) remain the same.

(12) The annual fee for individual MPDES permittees who elect to participate in the adaptive management program for implementing nutrient standards in Schedule III.D is assessed upon submission of an adaptive management plan annual report, as required in [NEW RULE II], for each year the permittee is eligible for participation in the adaptive management program, excepting the year in which the application fee is assessed.

Schedule III.D Annual Fee for Adaptive Management Program Participation

Category	Minimum Fee	Fee Per Million Gallons of Effluent per Day (MGD)
Annual fee for adaptive management program participation pursuant to [NEW RULE II]	$3,000	$3,000

AUTH: 75-5-516, MCA
IMP: 75-5-516, MCA

REASON: The department is revising ARM 17.30.201 to prescribe fees for the adaptive management program which was developed in consultation with the Nutrient Work Group, under 75-5-321, MCA. Section 75-5-321, MCA, directed the department to develop an adaptive management program without providing additional funding support. Fees are necessary for the department to recover costs for implementation of the adaptive management program, including enforcement and compliance monitoring for individual adaptive management plans (AMPs). Services provided by the department to permittees entering the adaptive management program will include, but are not limited to, review and approval of AMPs; training on necessary nutrient, algae, dissolved oxygen, and macroinvertebrate sampling methods; assistance on required data entry; and consultation on AMP development methods. The proposed fees will financially support the department's services.

The fees to be assessed by the department will include an application fee for permittees seeking authorization for participation in the adaptive management program and an annual fee for permittees with an approved adaptive management plan that are eligible to continue participating in the adaptive management program. The program authorization fee will be assessed per permit cycle, based upon permit application and renewal. Adaptive management program fees to be assessed are in addition to the fees for individual and general permit application and annual fees. These additional fees are necessary for department staff to process reviews of

AMPs, conduct compliance inspections of AMP sampling protocols, any enforcement of permit conditions associated with the AMP, as well as staff travel costs associated with compliance inspections and AMP training provided to permittees.

The department calculated its costs for implementing the adaptive management program on an annual basis at an amount of approximately $207,000. However, subject to statutory fee caps in 75-5-516, MCA, an adaptive management program application fee must be capped at $5,000 and annual fees capped at $3,000 per million gallons discharged per day. Assuming seven permittees participate in the adaptive management program on an annual basis, $29,588 would need to be collected from each permittee to cover department costs. Therefore, the fee structure as proposed in ARM 17.30.201 is insufficient to recover department costs to implement the adaptive management program.

Section (1) is also being amended to replace incorrect numbering in (1)(b), (c), and (d).

17.30.507 SPECIFIC RESTRICTIONS FOR SURFACE WATER MIXING ZONES (1) Mixing zones for surface waters are subject to the following water quality standards:

(a) narrative water quality standards, standards for harmful substances, numeric acute and chronic standards for aquatic life, ~~; standards in Department Circular DEQ-12A;~~ and standards based on human health must not be exceeded beyond the boundaries of the surface water mixing zone;

(b) through (3) remain the same.

AUTH: 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsection (1)(a) is amended to comply with SB 358 that requires removal of all references to Department Circular DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified below (ARM 17.30.619).

17.30.516 STANDARD MIXING ZONES FOR SURFACE WATER (1) and (2) remain the same.

(3) Facilities that meet the terms and conditions in (a) through (e) qualify for a standard mixing zone as follows:

(a) Facilities that discharge a mean annual flow of less than one million gallons per day (MGD) to a stream segment with a dilution ratio greater than or equal to 100:1. For purposes of this procedure, the stream dilution ratio is defined as the seven-day, ten-year (7Q10) low flow of the stream segment without the discharge, divided by the mean annual flow of the discharge. For total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7, the stream low flow used in calculating the dilution ratio is based on the seasonal 14-day, five-year (14Q5) low flow, which is the lowest average 14 consecutive day low flow, occurring from July through October, with an average recurrence frequency of

once in five years. In this case discharge limitations will be based on dilution with the applicable low flow value, the 7Q10, or the seasonal 14Q5.

(b) Facilities that discharge a mean annual flow less than one MGD to a stream segment with a dilution less than 100:1. In cases where dilution is less than 100:1, discharge limitations will be based on dilution with 25 percent of the 7Q10 (or 100 percent of the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7).

(c) remains the same.

(d) Facilities whose discharge results in a nearly instantaneous mixing zone. Discharge limitations shall be based on dilution with the ~~seven-day, ten-year~~ 7Q10 (or the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7) low flow of the receiving water except as limited by consideration of the factors listed in ARM 17.30.506. For surface waters, nearly instantaneous mixing will be assumed when there is an effluent diffuser which extends across the entire stream width (at low flow), or when the mean daily flow of the discharge exceeds the ~~seven-day, ten-year~~ 7Q10 (or the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7) low flow of the receiving water. A discharge may also be considered nearly instantaneous if the discharger so demonstrates in accordance with a study plan approved by the department. For the purposes of this demonstration nearly instantaneous mixing will be assumed when there will be not more than a ten percent difference in bank-to-bank concentrations at a downstream distance less than two stream/river widths.

~~(e) Facilities that discharge the parameters found in Department Circular DEQ-12A to surface water. Discharge limitations must be based on dilution with the entire seasonal 14-day, five-year (seasonal 14Q5) low flow of the receiving water without the discharge.~~

(4) The length of a standard mixing zone for flowing surface water, other than a nearly instantaneous mixing zone, must not extend downstream more than the one-half mixing width distance or extend downstream more than ten times the stream width, whichever is more restrictive. For purposes of making this determination, the stream width as well as the discharge limitations are considered at the 7Q10 or seasonal 14Q5 low flow. ~~The seasonal 14Q5 low flow may be used only in conjunction with base numeric nutrient standards in Department Circular DEQ-12A.~~ The seasonal 14Q5 low flow may be used only in conjunction with total nitrogen, total phosphorus, or the nutrient parameters identified in Department Circular DEQ-7. The recommended calculation to be used to determine the one-half mixing width distance downstream from a stream bank discharge is described below.

(a) remains the same.

(b) L = CDU, where:

(i) C = channel irregularity factor immediately downstream of the discharge, where:

(A) remains the same.

(B) C = ~~O~~0.3 for channelized streams;

(C) through (6) remain the same.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: Subsections (3)(a), (b), and (d) are revised to clarify that for discharges of total nitrogen, total phosphorus, and the nutrient parameters identified in Department Circular DEQ-7, the seasonal 14Q5 is the correct low flow value to use instead of the 7Q10. The reason for applying the seasonal 14Q5 in rule is explained in the reason statement for amendments to (4). Subsection (3)(e) is removed to comply with SB 358 that requires removal of all references to DEQ-12A. Section (4) has been amended because the seasonal 14Q5 that was originally adopted in rule as the low-flow criteria for use in DEQ-12A has been retained in the rule. 14Q5 has been retained because it is the appropriate low-flow statistic to use only for seasonal impacts to surface waters from those parameters in (4) of this rule. Scientific work by DEQ shows that bottom-attached algae can develop in about 15 to 20 days when nutrient concentrations are elevated. The use of the seasonal 14Q5 for the design of disposal systems should not allow excess algae levels to occur on average more than once in five years, which is within acceptable recommendations by the U.S. Environmental Protection Agency. Those parameters with nutrient-related impacts are added to (4) and include total nitrogen, total phosphorus, and the nutrient parameters identified in Department Circular DEQ-7; nutrient parameters in DEQ-7 are dissolved forms of nitrogen and phosphorus which can, when elevated, stimulate algae growth as efficiently as total nutrients.

See also, reasons specified below (ARM 17.30.619).

Subsection (4)(b)(i)(B) is revised to correct a typographical error to change the letter "O" to the number zero.

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (40) remain the same.

~~(41) "DEQ-12A" means the department circular that is adopted and incorporated by reference in ARM 17.30.619 and is entitled "Montana Base Numeric Nutrient Standards." This circular contains numeric water quality standards for total nitrogen and total phosphorus in surface waters.~~

~~(42) "DEQ-12B" means the department circular that is adopted and that is entitled "Montana Base Numeric Nutrient Standards Variances." This circular describes procedures for receiving a variance from the standards and will document recipients of individual variances.~~

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Sections (41) and (42) are removed to comply with SB 358 that requires removal of all references to DEQ-12A and DEQ-12B. With the adoption of this rule package, any reference to DEQ-12A is obsolete. DEQ-12B was repealed directly by SB 358.

17.30.619 INCORPORATIONS BY REFERENCE (1) The department adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) through (c) remain the same.

(d) 40 CFR 131.10(g), (h) and (j) (2000), which establishes criteria and guidelines for conducting a use attainability analysis; and

~~(e) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (July 2014 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters; and~~

(f) remains the same but is renumbered (e).

~~(2) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute, under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then (1)(e) and all references to DEQ-12A, base numeric nutrient standards and nutrient standards variances in ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.622 through 17.30.629, 17.30.635, 17.30.702, and 17.30.715 are void, and the narrative water quality standards contained in ARM 17.30.637 are the standards for total nitrogen and total phosphorus in surface water, except for the Clark Fork River, for which the standards are the numeric standards in ARM 17.30.631.~~

(3) remains the same but is renumbered (2).

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsection (1)(e) is removed to comply with SB 358 that requires removal of all references to DEQ-12A. Section (2) was adopted in conjunction with DEQ-12A and therefore is also removed as required by SB 358; this contingent voidness provision is now obsolete.

This action effectively repeals the base numeric nutrient standards at DEQ-12A and replaces those numeric standards with the narrative nutrient standards at ARM 17.30.637(1)(e) and as provided in NEW RULE I. The department has concluded that NEW RULE I and the narrative nutrient standards translators and provisions in Circular DEQ-15 provide the same or a better level of protection for beneficial uses of state waters as was previously provided by numeric nutrient standards in Circular DEQ-12A. Circular DEQ-15 contains endnotes referencing department scientific studies–including newer scientific work completed since 2022–documenting the protectiveness of the biologically based response variables which are at the core of the new process. Also, the narrative nutrient standards in NEW RULE I and the narrative nutrient standards translators and provisions in Circular DEQ-15 provide added opportunity to account for site-specific information and special ecological conditions and exceptions. See also, reasons specified above (NEW RULE I).

17.30.622 A-1 CLASSIFICATION STANDARDS (1) and (2) remain the same.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards contained in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: Subsections (3)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.623 B-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.624 B-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.625 B-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: The proposed amendments to (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.626 C-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.627 C-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this

rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.628 I CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified I:

(a) through (i) remain the same.

(j) Beneficial uses are considered supported when the concentrations of toxic, carcinogenic, nutrient or harmful parameters in these waters do not exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the flows specified in ARM 17.30.635(2) or, alternatively, for aquatic life when site-specific criteria are adopted using the procedures given in 75-5-310, MCA. The limits shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards in Department Circular DEQ-7.

(k) Limits for toxic, carcinogenic, or harmful parameters in new discharge permits issued pursuant to the MPDES rules (ARM Title 17, chapter 30, subchapter 13) are the larger of the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~, site-specific standards, or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(j) and (k) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.629 C-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313,~~ MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.635 GENERAL TREATMENT STANDARDS (1) remains the same.

(2) For design of disposal systems, stream flow dilution requirements must be based on the minimum consecutive seven-day average flow which may be expected to occur on the average of once in ten years (7Q10). When dilution flows are less than the above design flow at a point discharge, the discharge is to be governed by the permit conditions developed for the discharge through the waste discharge permit program. If the flow records on an affected surface water are insufficient to calculate a ~~ten-year seven-day low flow~~ 7Q10 low flow, the department shall determine an acceptable stream flow for disposal system design. For total nitrogen, ~~and~~ total phosphorus, and the nutrient parameters identified in DEQ-7, the stream flow dilution requirements must be based on the seasonal 14Q5, which is the lowest average 14 consecutive day low flow, occurring from July through October, with an average recurrence frequency of once in five years.

(3) remains the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: To improve clarity, (2) adds the acronym of 7Q10 after it is initially defined and removes a second repetitive description of the term 7Q10. In (2), the term "nutrient parameters identified in DEQ-7" is added to the existing parameters (those parameters are total nitrogen and total phosphorus) applicable for use with the seasonal 14Q5 low flow statistic. The added parameters from DEQ-7 include total inorganic nitrogen and inorganic phosphorus. Limiting the use of the seasonal 14Q5 low flow to discharges of total nitrogen, total phosphorus, and the nutrient parameters identified in DEQ-7 is consistent with amendments proposed to ARM 17.30.516. See also, reasons specified above (ARM 17.30.516).

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for ~~"base numeric nutrient standards,"~~ "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (18) remain the same.

(19) "Nutrients" means inorganic phosphorus and total inorganic nitrogen.

(19) and (20) remain the same but are renumbered (20) and (21).

~~(21)~~(22) "Required reporting values (RRV)" means the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the department unless otherwise specified in a permit, approval, or authorization issued by the department. The RRV is the department's best

determination of a level of analysis that can be achieved by the majority of commercial, university, or governmental laboratories using EPA approved methods or methods approved by the department. The RRV is listed in Department Circular DEQ-7~~., Department Circular DEQ-12A, and in the definition of "total inorganic phosphorus."~~

(22) through (26) remain the same but are renumbered (23) through (27).

(~~27~~)(28) The department adopts and incorporates by reference:

(a) remains the same.

~~(b) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (December 2013 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters;~~

(c) through (e) remain the same but are renumbered (b) through (d).

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

REASON: The rule introduction, definition (22) and definition (28)(b) have been amended or removed to comply with SB 358 that requires removal of all references to DEQ-12A and base numeric nutrient standards. A definition of "nutrients" is added as (19). The definition is needed to implement nutrient-related water quality standards and nondegradation limits specific to groundwater discharges and subdivision reviews. The parameters listed in the definition, total inorganic nitrogen and inorganic phosphorus, are consistent with the two parameters listed in DEQ-7 as nutrients. New (22) corrects the phrase "Reporting values (RRV)" to "Required reporting values (RRV)" to be consistent with DEQ-7. In new (22), at the end of the definition, the following phrase "…and in the definition of 'total inorganic phosphorus'" is incorrect and has been removed because there is no existing definition of "total inorganic phosphorus" in rule. DEQ-7 includes the parameter "inorganic phosphorus," which has an RRV associated with it; this parameter is functionally the same as "total inorganic phosphorus." To maintain consistency between rules and circulars, reference to "total inorganic phosphorus" has been removed here and changed to "inorganic phosphorus" in the other instance it is used in rule, ARM 17.30.715(1)(e), as part of this rulemaking package. See also, reasons specified above (ARM 17.30.619).

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) through (c) remain the same.

(d) changes in the concentration of nitrate in ground water which will not cause degradation of surface water if the sum of the predicted concentrations of

nitrate at the boundary of any applicable mixing zone will not exceed the following values:

(i) through (iii) remain the same.

(iv) 7.5 mg/L for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 mg/L primarily from sources other than human waste.

For purposes of this subsection (d), the word "nitrate" means nitrate as nitrogen; ~~and~~

(e) changes in concentration of ~~total~~ inorganic phosphorus in ground water if water quality protection practices approved by the department have been fully implemented and if an evaluation of the phosphorus adsorptive capacity of the soils in the area of the activity indicates that phosphorus will be removed for a period of 50 years prior to a discharge to any surface waters;

(f) changes in the quality of water for any harmful parameter, and total nitrogen and total phosphorus for reaches of the Clark Fork River listed at ARM 17.30.631, ~~and parameters listed in Department Circular DEQ-12A,~~ except as specified in (1)(g), for which water quality standards have been adopted other than carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than ten percent of the applicable standard and the existing water quality level is less than 40 percent of the standard;

(g) remains the same.

(h) changes in the quality of water for any parameter for which there are only narrative water quality standards, including those addressed by [NEW RULE I], if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

(2) and (3) remain the same.

~~(4) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then the significance criteria contained in (1)(g) are the significance criteria for total nitrogen and total phosphorus in surface water.~~

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

REASON: Subsection (1)(e) has been amended to replace "total inorganic phosphorus" with "inorganic phosphorus." There is no functional difference in meaning between the two parameters, but inorganic phosphorus is used to be consistent where it is proposed in this rulemaking package for use in ARM 17.30.702(19) and is currently used in DEQ-7. See also, reasons specified above (17.30.702). Subsection (1)(f) has been amended to comply with SB 358 that requires removal of all references to DEQ-12A. The amended language in (1)(f) also clarifies that with the repeal of DEQ-12A, (1)(f) no longer applies to total nitrogen and total phosphorus in surface waters other than those segments of the Clark Fork River described in ARM 17.30.631. Prior to the adoption of DEQ-12A,

total nitrogen and total phosphorus were primarily addressed through the narrative nutrient standards at ARM 17.30.637(1)(e). To be consistent with SB 358, and except where numeric standards are established by rule, water quality changes related to total nitrogen and total phosphorus will be assessed under the narrative standards provision at (1)(h). Notwithstanding compliance with the criteria of (1)(h), the department may determine that the change in water quality resulting from an activity is degradation pursuant to (2). See also, reasons specified above (ARM 17.30.619). Section (4) was adopted in conjunction with DEQ-12A and therefore is also removed as required by SB 358; this contingent voidness provision is now obsolete.

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) remains the same.

(2) "Adaptive management plan" means a watershed-specific plan developed under the adaptive management program to achieve the narrative nutrient standards and address nutrients in a specific watershed. ~~An adaptive management plan includes a watershed monitoring plan and, if required, an implementation plan.~~

(3) through (83) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The amendments to (2) are being made to match the definition of "adaptive management plan: that is included in Circular DEQ-15 and to be more concise. The components of an Adaptive Management Plan are described in greater detail in Circular DEQ-15 and are not necessary in the definition.

5. The department proposes to repeal the following rules:

17.30.660 NUTRIENT STANDARDS VARIANCES

AUTH: 75-5-313, MCA
IMP: 75-5-313, MCA

REASON: This is an administrative update to remove a rule that was directly repealed by SB 358.

17.30.1388 DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM IMPLEMENTING NARRATIVE NUTRIENT STANDARDS

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-321, 75-5-401, MCA

REASON: This rule was adopted as an interim step between adoption of SB 358 and development of a comprehensive rule package related to narrative nutrient

standards to meet the statutory deadline of March 1, 2022 set forth in SB 358. This rule is being repealed as it is now unnecessary and redundant upon the adoption of the new rules proposed in this notice.

6. A copy of the proposed Circular DEQ-15 may be viewed at the department's website using the following web address: https://deq.mt.gov/public/publiccomment.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-434@mt.gov, and must be received no later than 5:00 p.m., June 10, 2024.

8. Kurt Moser, attorney for the department, or another department attorney, is designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 7 or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on November 6, 2023.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.20.1304, 17.20.1505, 17.20.1604 17.20.1606, and 17.20.1607 and the repeal of ARM 17.20.818, 17.20.907, 17.20.920, 17.20.921, 17.20.922, 17.20.923, 17.20.924, 17.20.928, and 17.20.929 pertaining to the Need Findings in the Montana Facility Siting Act (MFSA)	)))))))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL (MAJOR FACILITY SITING ACT) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 23, 2024, the Department of Environmental Quality proposes to amend and repeal the above-stated rules.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on May 14, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-443@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.20.1304 ELECTRIC TRANSMISSION LINES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity ~~as described in ARM 17.20.920~~ that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability, and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

(2) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed facility. An application ~~must~~ may also evaluate alternative timing of other electric transmission lines planned by the applicant, which in whole or in part would address the problem situation or

opportunity or provide the needed reinforcement that would be provided by the proposed facility. ~~For each transmission alternative, a minimum of three load flow studies must be provided, as required by ARM 17.20.922.~~

(3) and (4) remain the same.

~~(5) An application based on reliability of service considerations must contain an evaluation of alternative levels of transmission reliability, and of the provision of backup generation to customers with articular needs for reliability.~~

(6) and (7) remain the same, but are renumbered (5) and (6).

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The proposed changes in (1) remove the reference to ARM 17.20.920. The proposed text change from "must" to "may" in (2) would account for the fact not all applicants have other electric transmission lines planned. In (2), the existing regulated wholesale market of energy utilities were typically vertically integrated utilities, meaning that these utilities were solely responsible for generating, transmitting, and distributing energy to their customers. The proposed deletion of text in (2) is the removal of the reference to ARM 17.20.922. The proposed deletion of (5) is being done as it is a direct reference to ARM 17.20.923.

17.20.1505 ENERGY GENERATION AND CONVERSION FACILITIES, DECOMMISSIONING METHODS (1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The proposed change updates the implementing statute for this rule. The statute was repealed in 1997.

17.20.1604 LINEAR FACILITIES, PUBLIC INTEREST~~, CONVENIENCE AND NECESSITY~~ STANDARD (1) ~~In order for the~~ The department ~~to~~ must find that a proposed facility will serve the public interest, ~~convenience and necessity~~ as required by 75-20-301, MCA, ~~the department must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative,~~ based on a determination of the following:

(a) through (e) remain the same.

(f) any other factors the ~~board~~ department considers relevant.

(2) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, MCA

REASON: The replacement of "board" with "department" is necessary because MFSA no longer reports their findings to the board and instead should be the department. Senate Bill 274 of the 2023 Legislature removed "convenience and necessity" from the findings the department must make under 75-20-301, MCA.

These strike outs in rule reflect the amended statute. The deletion of the rest of the text would bring the rule more in line with 75-20-301, MCA, by removing rule language that does not align with statute.

17.20.1606 ~~ELECTRIC TRANSMISSION LINES~~ LINEAR FACILITIES, NEED STANDARD (1) ~~In order to find that there is a need for an electric transmission facility~~ To establish the basis of need, as required by 75-20-301, MCA, the department must find ~~that the services of the facility are needed by finding and determining~~ and determine at least one of the following:

~~(a) For facilities for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need in the application, either that:~~

~~(i) the transfer capacity of the proposed facility will be required within two years of the date the proposed facility is to be placed in service; or~~

~~(ii) if the finding in (1)(a)(i) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line, instead of a line for which the finding in (1)(a)(i) can be met, warrant the costs based on a finding and determination of the following:~~

~~(A) the expected benefits of building the proposed line compared with a line that would satisfy (1)(a)(i) ; and~~

~~(B) the extra costs of building the proposed line compared with a line that would satisfy (1)(a)(i) .~~

~~(b) For facilities for which insufficient power transfer capacity at adequate voltage levels under contingent operating conditions is a stated basis of need in the application, that:~~

~~(i) there is or will be a power transfer capacity shortage under contingent conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and~~

~~(ii) the contingent conditions under which existing transfer capacity is insufficient, are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.~~

~~(c) For facilities for which transient stability under normal operating conditions is a stated basis of need in the application, that there is or will be a transient stability problem under normal operating conditions, that will be rectified by the proposed facility within two years after the date the proposed facility is to be placed in service.~~

~~(d) For facilities for which transient stability under contingent operating conditions is a stated basis of need in the application, that:~~

~~(i) there is or will be a transient stability problem under contingent operating conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and~~

~~(ii) the contingent conditions under which the transient stability problems arise are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs.~~

~~(e) For facilities for which excessive voltage drop under normal operating conditions is a stated basis of need in the application, that:~~

(i) there is, or will be within two years after the proposed facility is to be placed in service, an excessive voltage drop that will be rectified by the proposed facility; and

(ii) the applicable design or operating voltage drop criteria used to justify the proposed facility are reasonably likely to result in benefits in excess of costs.

(f) For facilities for which excessive voltage drop under contingent operating conditions is a stated basis of need, that:

(i) there is or will be within two years after the proposed facility is to be placed in service a problem of excessive voltage drop under contingent operating conditions which will be rectified by the proposed facility; and

(ii) the applicable design or operating voltage drop criteria and the expected frequency and duration of the contingent operating conditions under which the problem exists are such as to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.

(g) For facilities for which reliability of service is a stated basis of need in the application:

(i) that the reliability criteria of the applicant will be violated within two years of the date the proposed facility is to be placed in service if the proposed facility is not built or some other solution is not implemented; and

(ii) that the value of the savings from reduced outage plus any value for general reliability of service, over the life of the facility, is reasonably likely to exceed the cost of the proposed facility.

(h) For facilities for which economy considerations are a stated basis of need:

(i) that the expected benefits of the proposed facility exceed the costs of the facility, given:

(A) the difference between expected system costs with and without the line;

(B) the expected location and size of markets and price for surplus power; and

(C) the expected source, quantity and price of purchased economy energy; and

(ii) that the benefits of the line warrant the resource commitment associated with it given the degree of uncertainty surrounding the benefits, likely markets, and economy purchases identified in (1)(h)(i) ; and

(iii) if transmission capacity exists that could carry the desired energy power flow without violating voltage drop, transfer capacity or other transmission planning criteria, that:

(A) the existing capacity is not available to the applicant at reasonable cost;

(B) the applicant has made every reasonable effort to reach agreement with the owners of the existing capacity;

(C) no agreement has been reached with the owners of the existing capacity; and

(D) no means exist for reaching a reasonable agreement with the owners of the existing capacity or for otherwise gaining access at reasonable terms to the existing capacity.

(i) For all facilities, that any forecast of loads is consistent with available information about loads and load growth in the area to be served by the proposed facility.

(a) the facility is a connecting link based on an explanation of how this facility would augment the existing system;

(b) the facility has been designated as a "common carrier" under 69-13-101, MCA;

(c) the facility has been identified to relieve a constraint or capacity issue between an energy resource, generation project, market or load center. The constraint or capacity issue(s) are based on existing, projected load or generation;

(d) the facility would resolve system reliability or stability issues;

(e) the facility would fulfill a requirement or recommendation of a federal, state, local, or other governmental regulatory body, or is recommended through an independent system operator or regional transmission organization planning process or objective;

(f) the facility is necessary to correct an existing or potential safety hazard;

(g) the facility is necessary to correct existing deficiencies to the existing network and explain how the facility would improve the existing network;

(h) the facility has been identified in economic studies to reduce total costs to ratepayers or customers; or

(i) the facility would provide firm energy transfer capacity in a path that currently does not exist.

AUTH: 75-20-105, MCA
IMP: 75-20-301, MCA

REASON: Inserting "linear" into the title in place of "electric transmission lines" makes it consistent with the rest of the MFSA rule titles as the term "linear facilities" is used throughout the rules. The change ensures that the rule applies not only to transmission lines but also pipelines, which are another type of linear facility under MFSA.

The proposed rule also updates an outdated standard of need required to obtain an MFSA certificate of compliance. The existing rule was written at a time when a regulated wholesale market of energy utilities were typically vertically integrated utilities, meaning that these utilities were solely responsible for generating, transmitting, and distributing energy to their customers. The proposed rule and its updated definition of need accounts for other types of transmission operators–like merchant transmission line operators–that may not be subject to cost of service regulations or have an obligation to provide service to end use rate payers, which are factors of analysis implicated by the existing rule.

The proposed rule, additionally, is reflective of decisions from the Federal Energy Regulatory Commission (FERC) that allow for the wholesale energy market to be expanded beyond vertically integrated energy utilities for the building of linear energy projects. The proposed rule, furthermore, is consistent with the 2023 Montana Legislature's amendment of 75-20-301(1)(a), MCA, *see* 2023 Mont. Laws Ch. 451, to strike the public interest, convenience, and necessity standard, previously required in approving an MFSA facility, and instead use the public interest standard.

17.20.1607 LINEAR FACILITIES, MINIMUM IMPACT STANDARD

(1) remains the same.

(2) The department must condition its approval of a facility on the following standards:

(a) through (c) remain the same.

(d) for electric transmission facilities, that the electric field at the edge of the right-of-way will not exceed one kV per meter measured one meter above the ground in residential or subdivided areas unless the affected landowner waives this condition~~, and that the electric field at road crossings under the facility will not exceed seven kV per meter measured one meter above the ground~~.

(e) through (h) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-301, MCA

REASON: This rule is intended to minimize adverse environmental impacts, as required by 75-20-301(1)(c), MCA. However, the rule was written in the context of only alternating current (AC) transmission lines and does not account for the possibility of direct current (DC) transmission lines. The text proposed to be stricken regarding electric fields at road crossings could unintentionally create adverse visual impacts or concerns for the Federal Aviation Administration due to the potential height of a facility that would be necessary to meet this standard. The proposed deletion would avoid this adverse impact at road crossings.

4. GENERAL REASON for the repeal of the following rules: The rules proposed to be repealed were written at a time when a regulated wholesale market of energy utilities were typically vertically integrated utilities, meaning that these utilities were solely responsible for generating, transmitting, and distributing energy to their customers. Eliminating these rules and updating the definition of need accounts for other types of transmission operators–like merchant transmission line operators–that may not be subject to cost of service regulations or have an obligation to provide service to end use rate payers, which are factors of analysis implicated by the existing rules.

Repealing these rules, additionally, is reflective of decisions from the Federal Energy Regulatory Commission (FERC) that allow for the wholesale energy market to be expanded beyond vertically integrated energy utilities for the building of linear energy projects. Furthermore, the proposed repeals are consistent with the 2023 Montana Legislature's amendment of 75-20-301(1)(a), MCA, *see* 2023 Mont. Laws Ch. 451, to strike the public interest, convenience, and necessity standard, previously required in approving a MFSA facility, and instead use the public interest standard.

5. The department proposes to repeal the following rules:

<u>17.20.818 LINEAR FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS</u>

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-211, 75-20-215, MCA

17.20.907 TRANSMISSION FACILITIES, REGIONAL RELIABILITY CRITERIA

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.920 ELECTRIC TRANSMISSION LINES, EXPLANATION OF NEED

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.921 ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.922 ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.923 ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.924 ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.928 OTHER LINEAR FACILITIES, EXPLANATION OF NEED

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

17.20.929 LINEAR FACILITIES, INTERCONNECTION AGREEMENTS

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-443@mt.gov, and must be received no later than 5:00 p.m., May 24, 2024.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., May 16, 2024.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three persons based on the interested parties list that the department keeps.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on March 4, 2024.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20.7.501, 20.7.502, 20.7.503, 20.7.509, 20.7.510, 20.7.511, and 20.7.512 and the repeal of ARM 20.7.504, 20.7.505, 20.7.506, and 20.7.507 concerning the siting, establishment, and expansion of prerelease centers	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 29, 2024, at 10:00 a.m., the Department of Corrections will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join via Microsoft Teams:

Meeting ID: 249 436 760 182
Passcode: inmoXN

(b) Telephone:

(406)-318-5487
Passcode: 503176088#

(c) Join on a video conferencing device:

Tenant key: 291818717@t.plcm.vc
Video ID: 112 205 591 2

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than May 15, 2024, to advise us of the nature of the accommodation that you need. Please contact Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-9819; or e-mail Pamela.Lammey@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

20.7.501 DEFINITIONS For purposes of this chapter, the following definitions apply:

~~(1) "Center" means prerelease center.~~

~~(2)~~ (1) "Department" means the Department of Corrections.

~~(3) "Expansion of existing center" means an existing pre-release center intends to go beyond its contracted bed capacity or add square footage for the purpose of housing offenders.~~

~~(4) "Local officials" means elected and appointed city, town, and county persons in leadership positions.~~

~~(5)~~ (2) "Prerelease center" means a residential facility for adult offenders located in a community which offers offenders room and board, supervision, counseling, and treatment.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.502 DETERMINATION OF NEED (1) Before proceeding with plans to establish a prerelease center, the department ~~shall~~ must make a ~~preliminary~~ written determination that there is a need for a prerelease center in the ~~city, town, or county~~ jurisdiction being considered. ~~The department shall develop a written rationale which documents the need for a center.~~ The written ~~rationale~~ determination of need must include:

(a) demographic and statistical data on the general and offender population of the ~~city, town, or county being considered~~ jurisdiction; and

(b) the proposed prerelease center's relationship to the correctional needs of the state.

(2) The determination of need must be published on the department's website.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.503 DETERMINATION OF MINIMUM REQUIREMENTS (1) The department ~~shall~~ must determine that within the ~~city, town, or county~~ jurisdiction being considered, there are available to the offenders:

(a) appropriate mental health and ~~chemical dependency~~ substance abuse treatment disorder services;

(b) adequate job opportunities ~~as determined by appropriate state agencies~~;

(c) opportunities for basic education, ~~GED~~ high school equivalency education, technical training, and post secondary education; and

(d) opportunities for volunteer and community service.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.509 ~~PUBLIC HEARING~~ DETERMINATION OF PUBLIC SUPPORT

(1) ~~The working committee, with the assistance of local officials and~~ After the department has selected a proposed location for a new prelease center the

department must determine that there is community support for a prerelease center to be located in that location.

(2) The mechanism for determining community support is as follows:

(a) The department~~, shall~~ must conduct a public hearing held in conformity with Title 2, chapter 3, MCA.

~~(2)~~(i) The department ~~shall~~ must publish notice of the hearing on its website and in a newspaper of general circulation within the proposed ~~specific geographic area~~ jurisdiction ~~reasonably in advance~~ at least five business days prior to the date of the hearing.

(ii) The department ~~shall~~ must also ~~mail notice~~ provide notice of the hearing to all interested persons who have expressed to the department an interest concerning department actions and have requested to be placed on the department's list of interested persons. Interested persons can be notified either by emailing or mailing the notice to the interested person. If the hearing notice is mailed, it must be mailed, by regular mail, at least ten business days prior to the date of the hearing. If notice is e-mailed, it must be sent at least five business days prior to the date of the hearing.

~~(3)~~ (iii) The department ~~shall~~ must allow ~~interested persons the opportunity~~ comments to be submitted ~~submit data, views, or arguments orally or~~ in writing prior to the hearing, ~~at the hearing,~~ and for ~~a reasonable time~~ ten business days after the hearing.

~~(4)~~ (iv) The hearing must be held in an accessible facility in the ~~specific geographic area~~ jurisdiction in which the proposed ~~for the~~ prerelease center will be located.

(3) Before a prerelease center can be sited, the governing body of the jurisdiction in which the prelease center will be located must, after conducting its own public hearing, pass a resolution in support of siting a prerelease center at the location selected by the department.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.510 REQUEST FOR PROPOSALS (1) ~~After the working committee has approved a specific geographic area of the city, town, or county for the center and the department has shown through surveys that the area has the support of local officials and the public,~~ After the department has held a public hearing and obtained a resolution of support from the governing jurisdiction, the department ~~shall request proposals from vendors to construct or acquire a building and operate the center within the boundaries identified for the specific geographic area.~~ must issue a request for proposals using a competitive process and follow the applicable contract and procurement procedures in Title 18, MCA.

~~(2) The department shall choose the best proposal consistent with the criteria developed by the department.~~

~~(3) Proposers shall submit proposals based on a specific site within the geographic area which the working committee selected and the public approved~~.

(2) The department does not have to request proposals for operation of a prerelease center when the department intends to operate the prerelease center.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.511 ~~EXPANSION OF~~ INCREASE IN CONTRACT CAPACITY FOR AN EXISTING PRELEASE CENTER (1) The department ~~of Corrections~~ may biennially increase the department contract capacity for a prerelease center by not more than 25 percent over the previous biennial contract capacity without engaging in the competitive procurement process.

(2) The department may biennially increase the contract capacity by more than 25 percent but less than 50 percent over the previous biennial contract capacity without engaging in the competitive procurement process if:

(a) the department has determined, in writing, that the increase is in the best interest of the department;

(b) the increase does not change the nature of the prerelease services; and

(c) the current contract has at least twelve months remaining, including renewals, before expiration.

(3) Before the department executes a contract amendment for an ~~expansion~~ increase in contract capacity of more than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to ~~expand~~ increase the existing prerelease contract capacity.

(a) The department must publish the notice on its website and mail or email the notice to each existing department prerelease center or program provider not less than 90 days in advance of the proposed ~~expansion~~ increase date.

(b) The notice must request potential contractors to notify the department, in writing, of their interest in providing the same services within a reasonable period of time as specified in the notice.

(c) The notice must request potential contractors to provide proof to the department that the potential contractor has the ability to provide the contracted services.

~~(d) Notice is considered accomplished under this subsection if the department publishes the notice on its web site and sends such notice to each existing department prerelease facility or program provider.~~

~~(e) The department shall set a reasonable deadline for potential contractors to notify the department.~~

~~(f)~~ (d) If the department receives appropriate notification under this ~~subsection~~ rule, the department may not proceed without opening up the ~~expansion~~ increase to competitive bidding and following the applicable contract and procurement procedures in Title 18, MCA, for the ~~expansion~~ increased capacity portion only.

(4) The department may not increase contract capacity by more than 50 percent the department contract capacity for a prerelease program without engaging in the competitive bidding process and following the applicable contract and procurement procedures in Title 18, MCA, for the ~~expansion~~ increased capacity portion.

(5) For an ~~expansion~~ increase of the contract capacity of more than 25 percent, the department ~~shall~~ must conduct a public hearing as provided for in ARM

20.7.509(1) and(2). ~~in the neighborhood in which the center is situated. The department shall conduct the hearing in conformity with Title 2, chapter 3, MCA.~~

~~(a) The department shall publish notice of the hearing in a newspaper of general circulation within the city, town, or county reasonably in advance of the hearing. The department shall also mail notice of the hearing to all interested persons who have expressed to the department an interest concerning department actions and have requested to be placed on the department's list of interested persons.~~

~~(b) The department shall allow interested persons the opportunity to submit data, views, or arguments orally or in writing prior to the hearing, at the hearing, and for a reasonable time after the hearing.~~

~~(c) The hearing must be held in an accessible facility in the neighborhood in which the center is situated.~~

~~(d) A prelease center expansion is subject to any existing conditions, covenants, restrictions of record, and zoning regulations.~~

(6) This rule does not apply to ~~expansion~~ increase of department contract capacity for a contract between the department and a local or tribal government for operation of a prerelease program established pursuant to the Community Corrections Act, 53-30-301, MCA et seq.

(7) An existing prerelease center that proposes to move locations within the same jurisdiction does not have to be re-sited pursuant to this subchapter. Any move that will result in a proposed increase in contract capacity must comply with the capacity increase provisions in this rule.

(8) Prior to any existing prerelease center moving locations within the same jurisdiction, the department must approve of the move and conduct a public hearing as provided for in ARM 20.7.509(1) and (2).

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.512 DETERMINING A LOCATION ~~SPECIFIC GEOGRAPHIC AREA~~

(1) ~~The committee must select a proposed area with specific identifiable boundaries that it deems suitable for a prerelease center. The proposed area the committee identifies must have access to~~ The prerelease center must be located in an area that has access to:

(a) a law enforcement agency capable of emergency response within 15 minutes;

(b) 24-hour emergency medical and fire protection services;

(c) medical transportation services from a licensed ambulance service; and

(d) fire protection by a professional fire protection service capable of responding within a reasonable time as determined by the state fire marshal or the authority having jurisdiction.

~~(2) The committee shall involve local organizations such as service groups and local government advisory boards to assist the committee to select a specific geographic area for the center.~~

~~(3)~~ (2) ~~The specific geographic area within the city, town, or county which the committee chooses~~ The selected location must be in compliance with all applicable

laws, codes, ordinances and existing conditions, covenants, restrictions of record, zoning regulations, or be capable of coming into compliance with applicable zoning regulation through the use of a zoning change, variance, conditional use permit, ~~PUD~~ planned unit development, or other process set forth in the governing zoning regulations.

~~(4) After the working committee has selected the proposed geographic area, the department shall contract with a professional consulting firm to conduct a comprehensive, statistically valid, and nonbiased survey to determine if the area has an appropriate level of support of local officials, the public who live within the geographic area, and the businesses that are located within the geographic area.~~

~~(a) To determine support of local officials, the consulting firm shall survey the following local officials:~~

~~(i) members of city, town, or county governing bodies;~~

~~(ii) city, town, or county attorney;~~

~~(iii) chief public defender, if there is one;~~

~~(iv) mayor of chief executive officer of city or town;~~

~~(v) local district judges;~~

~~(vi) local state legislators who represent any portion of the city, town, or county of the proposed geographic area;~~

~~(vii) sheriff; and~~

~~(viii) if there is one, the chief of police.~~

~~(b) To determine support of the public, the consulting firm shall survey a statistically valid random sampling of persons who live in the area and persons who own businesses within the geographic area.~~

~~(5) The working committee shall approve both surveys.~~

~~(6) An appropriate level of support is at least 51 percent of local officials and 60 percent of the public and business owners surveyed.~~

~~(7) If the geographic area the committee selects does not garner the appropriate amount of support in the survey, the committee may select another area and proceed with the process indicated in (1) through (5) of this rule.~~

~~(8) The department may not move forward and publish a request for proposals until the working committee has selected a specific geographic area and the department can show through the survey in (3) and (4) of this rule that the area has the support of local officials and the public.~~

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

REASON: The department proposes to amend these rules to align with existing law, eliminate redundancies, and provide greater clarity for the siting, establishment, and expansion of prerelease centers. Many of the existing rules were promulgated prior to the 2011 amendments to 53-1-203, MCA. The amendments to the rule regarding determination of public support includes requirements for notice to the public and media, a public hearing, and local government support. The amendments to the rule regarding expansion of existing prerelease centers removes duplicative language regarding the public process. That rule is also amended to reflect that it concerns increases in contract capacity. Amendments to the geographic area rule remove

unnecessary references to the process for determination of public support, which is covered by other rules.

4. The department proposes to repeal the following rules:

20.7.504 OBTAINING SUPPORT OF LOCAL OFFICIALS FOR A PROPOSED PRERELEASE CENTER

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.505 NOTIFICATION OF MEDIA

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.506 WORKING COMMITTEE

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.507 PUBLIC INVOLVEMENT PROCESS

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

REASON: The proposed amended rule regarding determination of public support contains the mechanisms to determine public support, notice to the media and public, the public hearing process, and a requirement of local governing body support. As a result, the rules proposed for repeal are redundant and unnecessary.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-3930; or e-mail Pamela.Lammey@mt.gov, and must be received no later than 5:00 p.m., May 29, 2024.

6. The Legal Unit of the Department of Corrections has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Andres Haladay
Andres Haladay
Rule Reviewer

/s/ Brian Gootkin
Brian Gootkin
Director
Department of Corrections

Certified to the Secretary of State April 18, 2024.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201 and 23.4.212 pertaining to drug and/or alcohol analysis	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 27, 2024, the Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Justice no later than 5:00 p.m. on May 10, 2024, to advise us of the nature of the accommodation that you need. Please contact Laura Schultz, Department of Justice, P.O. Box 201401, Helena, Montana, 49620-1401; telephone (406) 444-3342; fax (406) 444-3549; or e-mail Laura.Schultz@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) and (2) remain the same.

(3) "Alveolar air" means that air which is located in the alveoli of the lungs and is responsible for the exchange of gases between the blood and the lung. This is the type of breath upon which the 2100:1 breath blood ratio is established.

(3) through (25) remain the same, but are renumbered (4) through (26).

AUTH: 61-8-1019, MCA
IMP: 61-8-1019, MCA

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT (1) through (7) remain the same.

(8) All results of a breath analysis shall be reported as grams of alcohol by weight per 210 liters of deep lung breath, which contains a portion of alveolar air (G/210L). All test results will be reported on a form approved by the division. Copies of all test results will be sent to the division on a monthly schedule. Failure to file a copy of the report with the division does not invalidate the test results, if the report is on file at the testing location.

AUTH: 61-8-1019, MCA
IMP: 61-8-1019, MCA

REASON: The addition of the term "alveolar air," including its definition, is necessary as it sets the scientific background for using G/210L as a reporting method for breath alcohol content (BrAC) results. This reference is helpful with certain types of defense challenges in court as it relates to the definition of "alcohol concentration" as set forth in 61-8-1001, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laura Schultz, Department of Justice, P.O. Box 201401, Helena, Montana, 49620-1401; telephone (406) 444-3342; fax (406) 444-3549; or e-mail Laura.Schultz@mt.gov, and must be received no later than 5:00 p.m., May 24, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laura Schultz at the above address no later than 5:00 p.m., May 24, 2024.

6. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 429 persons based on 4,290 total BrAC tests run between July 1, 2022, and July 1, 2023.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State April 16, 2024.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I and II, the amendment of ARM 24.138.301, 24.138.402, 24.138.406, 24.138.407, 24.138.419, 24.138.502, 24.138.503, 24.138.511, 24.138.514, 24.138.530, 24.138.906, 24.138.2301, 24.138.2703, 24.138.2707, 24.138.2710, 24.138.2712, 24.138.3003, 24.138.3101, 24.138.3221, 24.138.3223, 24.138.3225, 24.138.3227, and 24.138.3231, and the repeal of ARM 24.138.206, 24.138.208, 24.138.306, 24.138.403, 24.138.414, 24.138.415, 24.318.416, 24.138.417, 24.138.418, 24.138.430, 24.138.504, 24.138.505, 24.138.506, 24.138.508, 24.138.512, 24.138.513, 24.138.525, 24.138.540, 24.138.601, 24.138.603, 24.138.2101, 24.138.2102, 24.138.2103, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2302, 24.138.2303, 24.138.2701, 24.138.2705, 24.138.2714, 24.138.2716, 24.138.2719, 24.138.3001, 24.138.3002, 24.138.3102, 24.138.3211, 24.138.3213, 24.138.3215, 24.138.3217, 24.138.3219, and 24.138.3229 pertaining to the Board of Dentistry	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 21, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86083012769
Meeting ID: 860 8301 2769, Passcode: 366479
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 860 8301 2769, Passcode: 366479

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 14, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Consistent with the Red Tape Relief initiative as well as its ongoing obligation to review its own rules, the Board of Dentistry (board) undertakes this rulemaking to simplify, shorten, and clarify its own rules for improved usability by the public.

4. The proposed new rules are as follows:

NEW RULE I APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

(a) a completed application form;

(b) the initial license fee;

(c) verification of applicable educational requirements;

(d) proof of a current cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) card. Internet courses will be accepted if a hands-on evaluation of clinical competency is also included; and

(e) successful completion of the jurisprudence exam with a score of at least 75 percent.

(2) The department will obtain a query from the National Practitioner Data Bank.

(3) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.

(4) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-4-301, 37-4-401, 37-4-402, 37-29-201, 37-29-303, 37-29-306, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to shorten and simplify the administrative rules. Presently, the board has multiple rules governing license applications. This proposal seeks to simplify the rules by consolidating all such rules into one location, applicable to all license types.

NEW RULE II CONTINUING EDUCATION (1) Licensees must obtain the following continuing education (CE) hours per three-year cycle with a starting date of 2015, prior to renewal:

(a) 60 hours for dentists. If a dentist also holds an anesthesia permit, the dentist must obtain as part of the 60 hours the following anesthesia-specific education:

(i) 20 hours for deep sedation/general anesthesia; or

(ii) 12 hours for moderate sedation.

(b) 36 hours for dental hygienists:

(i) three hours of fluoride agents, topical oral anesthetics, or nonsystemic oral antimicrobials for dental hygienists who qualify for limited prescriptive authority under 37-4-401, MCA; and

(ii) 12 additional hours for dental hygienists with a limited access permit.

(c) 36 hours for denturists.

(2) Continuing education requirements do not apply until a licensee's first full year of licensure.

(3) Board/staff will not preapprove CE programs or sponsors. Licensees must select quality programs that:

(a) contribute to professional knowledge and competence;

(b) contain significant intellectual or practical content; and

(c) are germane to the licensed profession.

(4) All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as part of annual license renewal.

(5) Licensees must maintain CE documentation and make the documentation available upon request. Documentation must include:

(a) licensee name;

(b) presenter or sponsor;

(c) course title and/or description of content;

(d) course date(s); and

(e) number of CE hours earned.

(6) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

(7) Any CE hours required by disciplinary order do not apply toward hours required annually.

(8) The department, with respect to any CE audit it performs, shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

(9) In addition to the continuing education requirements above, all licensees shall maintain a current cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) card. Internet courses will be accepted if a hands-on evaluation of clinical competency is also included.

(10) One-time credit for first-time preparation and teaching of a program which meets the criteria in (3) qualifies for the number of hours granted to individuals who take the program.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, MCA

REASON: The board is repealing ARM 24.138.2101, 24.138.2102, 24.138.2103,

24.138.2104, 24.138.2105, and 24.138.2106 and replacing them with this new rule to simplify and standardize with procedures used by all licensing boards. The board is amending the CE standards in (3) to simplify and provide broader guidance as to acceptable CE content and allowing for credit for preparing and teaching programs in (10)

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

~~(1) "Advertisement" is any communication made or disseminated to the public in any manner designed to attract public attention to the practice of a dentist who is licensed to practice dentistry in Montana.~~

(1) "Administration is as follows:

(a) "enteral administration" means the agent is absorbed through the gastrointestinal tract or oral mucosa (oral, rectal, or sublingual);

(b) "inhalation administration" means a gaseous or volatile agent is introduced into the lungs and absorbed through the gas/blood interface. Because sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences (rescue) for patients whose level of sedation becomes deeper than initially intended;

(c) "parenteral administration" means the agent is absorbed intramuscularly, intravenously, intranasally, submucosally, subcutaneously, or intraosseously;

(d) "transdermal administration" means the agent is absorbed through a patch or by iontophoresis through the skin; and

(e) "transmucosal administration" means the agent is absorbed across the mucosa (intranasal, rectal, or sublingual).

~~(2) "Bait and switch advertising" is an alluring but insincere offer to sell a product or provide a service that the advertiser, in truth, does not intend or want to sell and which is designed to switch the consumer from purchasing the advertised product or service to another product or service, usually at a higher fee or on a basis more advantageous to the advertiser.~~

(3) and (4) remain the same but are renumbered (2) and (3).

~~(5)~~(4) "Direct supervision"~~, for the purpose of ARM 24.138.406,~~ means the provisions of allowable functions by dental hygienists, auxiliaries, or interns with the intent and knowledge of the ~~dentist~~ supervising licensee and while the supervising ~~dentist~~ licensee is on the premises.

~~(6) "Discounted fee" is a fee offered or charged by a person or organization for any dental product or service that is less than the fee the person or organization usually offers or charges for the product or service but does not include products or services explicitly offered free of charge.~~

~~(7)~~(5) "General supervision~~,~~" ~~for the purpose of ARM 24.138.406,~~ means the provision of allowable functions by dental hygienists or auxiliaries provided to a current patient of record, with the intent and knowledge of the licensee ~~dentist~~

~~licensed and residing in the state of Montana~~. The ~~supervising dentist~~ licensee need not be on the premises.

~~(8) "Material fact" is any fact that an ordinary, reasonable, and prudent person would need to know or rely upon in making an informed decision concerning dental care or the selection of a dentist to serve the patient's particular needs.~~

(6) "Inhalation sedation" means the use of nitrous oxide/oxygen in concentrations of up to 70/30 percent to provide mild relaxation and analgesia. Nitrous oxide/oxygen may produce minimal sedation, moderate sedation, deep sedation, or general anesthesia when used in combination with a sedative agent or agents. Inhalation sedation may be used in the pediatric or adult populations.

(7) "Maximum recommended dose" (MRD) means the maximum Food and Drug Administration (FDA)-recommended dose of a drug, as printed in the FDA-approved labeling for unmonitored dose.

(8) "Minimal sedation" means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. When the intent is minimal sedation for adults, the appropriate dose of a single enteral drug is no more than the MRD of a drug that can be prescribed for unmonitored home use.

(9) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. The drugs and/or techniques used for moderate sedation should render the unintended loss of consciousness unlikely. Repeated dosing of an agent before the effects of previous dosing is obtained may result in a greater alteration of the state of consciousness than intended. A patient whose only response is reflex withdrawal from a painful stimulus is not in a state of moderate sedation.

~~(9) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.~~

~~(10) "Retired or nonpracticing dentist or dental hygienist" is a person who has surrendered or not renewed the individual's license for nondisciplinary reasons and has ceased to practice the individual's profession for remuneration.~~

~~(11) "Volunteer licensee" is a dentist or dental hygienist licensed according to rule to provide dental healthcare related diagnosis, care, or treatment without receiving or expecting to receive compensation or any other form of remuneration.~~

(10) "Supplemental dosing" means a single additional dose of the initial dose of the initial drug necessary for prolonged procedures under minimal sedation. The supplemental dose should not exceed one-half of the initial total dose and should not

be administered until the dentist has determined that one clinical half-life of the initial dose has passed. The total aggregate dose must not exceed one and a half times the MRD on the day of administration.

(11) "Trained healthcare professional" means a person who serves as an anesthesia monitor in a dental office. Such person shall maintain current certification in the American Heart Association's Basic Life Support for Healthcare Providers or its equivalent, shall be trained in monitoring patient vital signs, and shall be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience).

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-4-511, 37-29-201, MCA
IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: The board is combining definition sections for ease of reference and understanding. The board is repealing definitions in (1), (2), (6), (8), (10) and (11) as those are commonly understood terms and do not require defining. The board is amending the definitions of direct and general supervision to account for supervision of hygienists as described throughout the chapter along with denturist direct supervision of interns. The board has also inserted the definitions that previously existed in the anesthesia definition section. Additionally, the board determined it is reasonably necessary to repeal the definition of prophylaxis in stricken (9). The term, as defined in current rule, can be inconsistent with insurance billing codes utilized by licensees under their allowed scopes. Authorizing and Implementing citations are being updated to include the new definitions.

24.138.402 FEE SCHEDULE (1) through (15) remain the same.

(16) Deep sedation/ general anesthesia permit application fee	200
(17) Deep sedation/general anesthesia permit renewal fee	25
(18) Moderate sedation permit application fee	200
(19) Moderate sedation permit renewal fee	25
(20) Initial anesthesia permit inspection fee	200
(21) Anesthesia permit reinspection fee	150

(16) remains the same but is renumbered (22).

(23) The Board of Dentistry adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, 37-29-201, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, 37-1-141, 37-4-301, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-4-511, 37-29-303, MCA

REASON: The board is combining fee rules for easier locating by licensees. Fees for anesthesia permits have been moved into this rule from ARM 24.138.3215, which has been proposed for repeal. The board is also moving the fee abatement rule provision into the fee rule for easier locating and understanding by licensees and the public.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES AND AUXILIARIES WHO HOLD DENTAL ASSISTANT CERTIFICATION (1) Dental auxiliaries ~~may~~ as defined in 37-4-408(1), MCA, may work under ~~the~~ direct supervision ~~of a licensed dentist per ARM 24.138.301~~ if the auxiliary:

(a) remains the same.

(b) was instructed and trained by a licensed dentist. ~~; or~~

~~(c) was instructed and trained in a board-approved continuing education course.~~

~~(2) A certified dental assistant may work under the general supervision of a licensed dentist per ARM 24.138.301~~.

~~(3)~~(2) A dental auxiliary ~~working~~ under ~~the~~ direct supervision ~~of a licensed dentist per ARM 24.138.301~~ may perform the following dental procedures including, but not limited to:

(a) making radiographic exposures as prescribed by the supervising dentist ~~as referenced in (12)~~ only if the auxiliary:

(i) has graduated from an accredited program of dental assisting, dental hygiene, or dentistry accredited by the Commission on Dental Accreditation or its successor; or

(ii) has been certified in dental radiology as a result of military experience; or

(iii) has successfully completed a board-approved radiology written examination;

(b) through (m) remain the same.

(n) placing pit and fissure sealants; ~~and~~

(o) digital capture of dental images;

~~(o)~~(p) coronal polishing~~.~~ ; and

(q) sodium bicarbonate air polishing.

~~(4) A certified dental assistant working under the general supervision of a licensed dentist per ARM 24.138.301 is prohibited from performing the following functions:~~

~~(a) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;~~

~~(b) applying silver diamine fluoride agents;~~

~~(c) placing and removing rubber dams;~~

~~(d) placing and removing matrices;~~

~~(e) polishing amalgam restorations; and~~

~~(f) applying topical anesthetic agents.~~

(3) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist.

~~(5)~~(4) A certified dental assistant as defined in 37-4-408(2), MCA, ~~working~~ under ~~the~~ general supervision ~~of a licensed dentist~~ may:

(a) place pit and fissure sealants following an in-person comprehensive oral examination or periodic examination within the preceding 30 days~~.~~;

(b) perform other intraoral procedures not requiring direct supervision; and

(c) expose radiographs.

~~(6)~~(5) ~~Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist, except that a certified dental assistant~~

~~may work under the general supervision of a licensed dentist.~~ A certified dental assistant may work under general supervision but may not perform the following tasks unless under direct supervision:

(a) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide;

(b) applying silver diamine fluoride agents;

(c) placing and removing rubber dams;

(d) placing and removing matrices;

(e) polishing amalgam restorations; and

(f) applying topical anesthetic agents.

~~(7)~~(6) ~~No~~ In addition to the prohibitions in 37-4-401, MCA, no dentist shall allow any dental auxiliary, including certified dental assistants, to perform the following:

~~(a) diagnosis and treatment planning as per 37-4-401, MCA;~~

~~(b) cutting hard or soft tissue or extracting teeth;~~

~~(c) prescribing any drugs as per 37-4-401, MCA;~~

(d) through (j) remain the same but are renumbered (a) through (g).

~~(k)~~(h) periodontal probing; or

~~(l)~~(i) metal based air polishing~~; or~~.

~~(m) prophylaxis as defined in ARM 24.138.301.~~

~~(8) Dentists shall not delegate to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental auxiliaries under 37-4-408, MCA, and board rules.~~

~~(9)~~(7) The assignment of tasks and procedures to dental auxiliaries, including certified dental assistants, shall not relieve the dentist from liability for all treatment rendered the patient.

~~(10) A dentist shall not employ, supervise or otherwise use more dental auxiliaries than the dentist can reasonably supervise in keeping with the dentist's ethical and professional responsibilities.~~

~~(11) The employing dentist shall verify that a dental auxiliary's qualifications comply with the statutes and rules of the board.~~

~~(12)~~(8) A dentist licensed to use or direct the use of an x-ray producing device must ensure that the radiation source under the dentist's ~~jurisdiction~~ control is used only by individuals competent to use it~~, as per ARM 37.14.1003~~. ~~Only a licensed dentist may prescribe radiation dosage and exposure.~~ Proof of current certification must be readily available for review by the public or the board upon request.

~~(a) A dental auxiliary, under the direct supervision of a licensed dentist, may expose radiographs only if the auxiliary:~~

~~(i) has graduated from an accredited program of dental assisting, dental hygiene, or dentistry accredited by the Commission on Dental Accreditation or its successor; or~~

~~(ii) has been certified in dental radiology as a result of military experience; or~~

~~(iii) has successfully completed a board-approved radiology written examination.~~

~~(b) A certified dental assistant may expose radiographs under the general supervision of a licensed dentist.~~

(c) For dental auxiliaries beginning work in Montana after January 1, 2016, radiology certification from other states will no longer be accepted, with the exception of a board-approved written examination. Dental auxiliaries who acquired radiology certification in other states and were employed as dental auxiliaries in Montana prior to January 1, 2016, will be grandfathered.

(13) Proof of current certification must be readily available for review by the public or the board upon request.

AUTH: 37-4-205, 37-4-408, MCA
IMP: 37-4-408, MCA

REASON: The board is amending this rule to repeal language duplicative of statute in (7)(a), (b), (c), and (8) and to reorganize the rule for better readability and clarity. The board has moved supervision requirements under (10) and (11) to its unprofessional conduct rule. The board is clarifying that metal based polishing is prohibited under (6), but adding that sodium bicarbonate based polishing is allowed with direct supervision under (2). Additionally, (6)(m) is being stricken since the board is proposing to repeal a specific definition of prophylaxis (see REASON in ARM 24.138.301).

24.138.407 FUNCTIONS FOR DENTAL HYGIENISTS (1) Allowable functions for the dental hygienist practicing under the supervision of a licensed dentist shall include dental procedures as allowed by Title 37, chapter 4, MCA, and board rule, and subject to (2) below, in which:

(a) the hygienist was instructed and qualified to perform in a school of dental hygiene accredited by the Commission on Dental Accreditation or its successor; or

(b) the hygienist was instructed and trained by a licensed dentist; or

(c) the hygienist was instructed and trained in a board acceptable continuing education course; or

(d) the hygienist is functioning in the capacity of a dental auxiliary as allowed by board rule.

(2)(1) A In addition to the functions of 37-4-401, MCA, a dental hygienist will be is allowed to perform the following dental auxiliary functions, under general supervision, including, but not limited to: the same functions as a dental auxiliary listed in ARM 24.138.406(2).

(a) making radiographic exposures, as prescribed by the supervising dentist;

(b) taking impressions for study or working casts;

(c) removing sutures and dressings;

(d) applying topical anesthetic agents;

(e) providing oral health instruction;

(f) applying topical fluoride agents;

(g) removing excess cement from coronal surfaces;

(h) placing and removing rubber dams;

(i) placing and removing matrices;

(j) collecting patient data;

(k) polishing amalgam restorations;

(l) placing pit and fissure sealants; and

~~(m) coronal polishing.~~

~~(3)~~(2) ~~A~~ In addition to the non-delegable duties under 37-4-401, MCA, a dental hygienist shall not be allowed to perform the following:

~~(a) diagnosis and treatment planning as per 37-4-401, MCA;~~

~~(b) cutting hard or soft tissue (except root planing and soft tissue curettage) or extracting teeth;~~

~~(c) prescribing any drug except fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials, under the general supervision of a licensed dentist or under public health supervision with a limited access permit, as per 37-4-401, MCA;~~

~~(d)~~(a) administering or dispensing ~~any~~ drugs other than those allowed under 37-4-401 MCA, without the prior authorization and direct supervision of the supervising dentist~~. This does not pertain to local anesthetic agents administered by a licensed dental hygienist qualified to administer the agents, topical agents, fluoride agents, topical oral anesthetic agents, nonsystemic oral antimicrobials, or sulcular medicaments~~;

(e) through (h) remain the same but are renumbered (b) through (e).

(4) remains the same but is renumbered (3).

~~(5) It shall be the responsibility of the employing dentist to verify that a dental hygienist's qualifications are in compliance with the statutes and rules of the Board of Dentistry.~~

AUTH: 37-1-131, 37-4-205, 37-4-401, 37-4-408, MCA
IMP: 37-1-131, 37-4-401, 37-4-405, 37-4-408, MCA

REASON: The board is amending this rule to repeal language duplicative of statute in (1) and (3). The board is also striking the qualifications of a hygienist from this rule, as those qualifications are set in ARM 24.138.503, and moved the supervision requirements of the dentist to ARM 24.138.2301. The board is further amending the rule to improve readability and organization.

24.138.419 LIMITED PRESCRIPTIVE AUTHORITY – QUALIFICATIONS – ALLOWABLE PERCENTAGES OF TOPICAL AGENTS (1) Education and competency for dental hygiene prescriptive authority will be accomplished by~~:~~

~~(a) meeting the requirements of ARM 24.138.407(1)(a) and shall include a~~ completion of a pharmacology course~~.~~

~~(b) maintaining three credit hours of continuing education each three-year renewal cycle to include courses in:~~

~~(i) fluoride agents;~~

~~(ii) topical oral anesthetics; or~~

~~(iii) nonsystemic oral antimicrobials; and~~

~~(c) meeting the requirements of ARM 24.138.2104.~~

~~(2) The hygienist shall attest they meet the qualifications for limited prescriptive authority on the initial application for licensure and the continuing education requirement on the annual license renewal application.~~

(3) remains the same but is renumbered (2).

AUTH: 37-1-131, 37-4-205, 37-4-401, MCA
IMP: 37-1-131, 37-4-401, 37-4-405, MCA

REASON: The board is amending this rule to move continuing education and renewal requirements to those respective rules

24.138.502 ~~INITIAL~~ LICENSURE OF DENTISTS ~~BY EXAMINATION~~ (1) ~~A completed application must include the following~~ Applicants for dentist licensure must have:

(a) ~~an original score card from~~ passed the written examination administered by the Joint Commission on National Dental Examinations or its successor showing the applicant's passage of the written examination ~~administered by the Joint Commission on National Dental Examinations~~;

(b) ~~certification of successful passage of~~ successfully passed a board-approved regional clinical practical examination. Examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination; and

(c) ~~verification of graduation~~ graduated from a dental school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. ~~Verification must consist of an original dental school transcript and a diploma. The board may accept a letter from the dean of the school of dentistry, program director, or the dean's equivalent attesting to the program of study, and that graduation status was attained to process the application; however, a license will not be issued until the transcript is received in the board office;~~

~~(d) license verifications from all jurisdictions where the licensee has held or holds a license;~~

~~(e) a copy of a self-query of the National Practitioner Data Bank;~~

~~(f) a copy of the applicant's current CPR, ACLS, or PALS card;~~

~~(g) the jurisprudence examination fee; and~~

~~(h) the application fee.~~

(2) ~~The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drug or substance, or by mental or physical illness which in the determination of the board renders the individual unfit or incapable of practicing dentistry.~~ A board-approved clinical practical exam must include the following components:

(a) patient-based or, beginning March 12, 2020, a simulated patient-based operative exam, to include one direct posterior class II composite and any one of the following:

(i) direct posterior class II composite; or

(ii) direct posterior class II amalgam; or

(iii) direct anterior class III composite;

(b) patient-based or, beginning March 12, 2020, a simulated patient-based periodontal exam;

(c) non-patient-based endodontics exam, to include:

(i) anterior access;

(ii) posterior access; and

(iii) obturation of one canal; and

(d) non-patient-based prosthodontics exam.

~~(3) Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.~~

~~(4) Application material remains valid for one year from the time it is received in the office.~~

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-301, 37-4-401, 37-4-402, MCA

REASON: The board is amending this rule to reflect changes in how scores are received from testing entities and to include the requirements of the clinical practical exam, so that all qualifications for licensure as a dentist are in one location. In addition, the board is updating clinical examination components to reflect current examinations. The board has moved standardized application requirements to NEW RULE I.

24.138.503 ~~INITIAL~~ LICENSURE OF DENTAL HYGIENISTS ~~BY EXAMINATION~~ (1) ~~A completed application must include the following:~~ Applicants for dental hygienist licensure must have:

(a) ~~an original score card from the Joint Commission on National Dental Examinations showing the applicant's passage of the written dental hygiene examination~~ passed the written dental hygiene examination administered by the Joint Commission on National Dental Examinations, or its successor;

(b) ~~certification of successful passage of~~ successfully passed a board-approved regional clinical practical examination. Examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination; and

(c) ~~verification of graduation~~ graduated from a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. ~~Verification must consist of an original dental hygiene school transcript. The board may accept a letter from the dean of the school of dental hygiene, program director, or dean's equivalent attesting to the program of study, and that graduation status was attained to process the application; however, a license will not be issued until the transcript is received in the board office;~~

~~(d) license verifications from all jurisdictions where the licensee has held or holds a license;~~

~~(e) a copy of a self-query of the National Practitioner Data Bank;~~

~~(f) a copy of the applicant's current CPR, ACLS, or PALS card;~~

~~(g) the jurisprudence exam fee; and~~

~~(h) the application fee.~~

~~(2) The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drug or substance, or by mental or physical illness which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.~~

(2) The patient-based or simulated patient-based clinical practical exam must include the following:

(a) clinical competency and patient competency with the following components:

(i) pocket depth;

(ii) recession;

(iii) calculus detection and removal; and

(iv) intraoral and extraoral assessment.

(3) ~~Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.~~ A local anesthetic permit applicant shall successfully pass the CDCA-WREB-CITA local anesthesia exam or board-approved local anesthetic exam.

~~(4) Application material remains valid for one year from the time it is received in the office.~~

(4) The board may review applications from applicants who have taken a clinical practical examination that does not meet the above criteria as nonroutine for licensure.

(5) Local anesthetic certification requires:

(a) education and training regarding the administration of local anesthetic agents as demonstrated by:

(i) successful passage of a board-approved local anesthetic examination, that includes a written and clinical component, within the last five years; or

(ii) proof of completion in coursework and training regarding the administration of local anesthetic agents and written verification that the applicant has practiced administering local anesthetic agents in another jurisdiction within the last five years;

(b) a copy of the applicant's current CPR, ACLS, or PALS card;

(c) payment of appropriate fees; and

(d) copies of any local anesthetic agent authorization(s) held in other states.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-131, 37-4-401, 37-4-402, MCA

REASON: The board is amending this rule to reflect changes in how scores are received from testing entities and to include the requirements of the clinical practical exam, so that all qualifications for licensure as a dental hygienist are in one location. The board has moved standardized application requirements to NEW RULE I. The board is further amending the rule to improve readability and organization.

24.138.511 ~~DENTURIST LICENSE REQUIREMENTS~~ LICENSURE OF DENTURISTS (1) Denturist license applicants must ~~submit a completed application, required fees, and documentation that demonstrates~~ have:

(a) ~~successful passage of~~ successfully passed:

(i) a board-approved written denturist examination; and

(ii) a board-approved clinical/practical denturist examination; ~~and~~

~~(iii) the board jurisprudence examination with a grade of at least 75 percent;~~

(b) ~~completion of~~ completed formal training of not less than two years~~:~~

~~(i)~~ at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state Board of Regents; and

~~(ii) under a curriculum that includes the courses set forth in 37-29-303, MCA;~~

(c) ~~completion of~~ completed a clinical internship of at least one year, but no more than two years, under the direct supervision of a licensed denturist~~;~~.

~~(d) license verification(s) from all jurisdictions where the licensee has held or holds a license;~~

~~(e) a current CPR, ACLS, or PALS card; and~~

~~(f) a self-query of the National Practitioner Data Bank.~~

(2) The clinical internship must consist of 2000 clock hours of training and performance as follows:

(a) 36 hours minimum in:

(i) patient charting;

(ii) operatory sanitation;

(iii) oral examination;

(iv) impressions, preliminary and final (pour models, custom trays);

(v) processing (wax up, flask boil out, packing, grind-polish); and

(vi) delivery-post adjustment;

(b) 12 hours minimum in:

(i) bite registrations;

(ii) articulations;

(iii) set ups; and

(iv) try ins;

(c) 48 hours minimum in:

(i) tooth repairs; and

(ii) broken or fractured plates or partials; and

(d) 24 units of processed relines (one plate - one unit).

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, 37-29-306, MCA

REASON: The board is amending this rule to include the internship requirements, so all qualifications for a denturitry license are in a single rule. The board has moved standard application requirements to NEW RULE I. The board is further amending the rule to improve readability and organization.

24.138.514 ~~CONVERTING FROM~~ INACTIVE LICENSE - CONVERSION TO ACTIVE ~~STATUS~~ ~~(1) Licensees may place their license on inactive status upon written request to the board.~~

~~(2) An inactive status license does not entitle the holder to practice dentistry, dental hygiene, or denturitry in the state of Montana.~~

~~(3) The board may consider a licensee request to convert an inactive status license to active status upon written request to the board if the applicant provides the following:~~

~~(a) a completed form;~~

~~(b) evidence that the applicant has actively and competently practiced in this or another jurisdiction within the last five years;~~

~~(c) license verification from all jurisdictions where the applicant is licensed or has held a license;~~

~~(d) certificates of attendance of continuing education pursuant to ARM 24.138.2105 as follows:~~

~~(i) 60 hours of continuing education for a dentist, for the three most current renewal years;~~

~~(ii) 36 hours of continuing education for a dental hygienist, for the three most current renewal years; or~~

~~(iii) 36 hours of continuing education for a denturist, for the three most current renewal years.~~

~~(e) a current CPR, ACLS, or PALS card; and~~

~~(f) any other information the board may require for evidence of operative competency.~~

(1) Licenses may be placed on inactive status by paying the appropriate fee and:

(a) indicating inactive status on the renewal form; or

(b) informing the board office in writing or e-mail.

(2) Inactive licensees shall:

(a) renew annually; and

(b) inform the board of all address/contact changes.

(3) Inactive status licensees may not practice in Montana.

(4) To convert from inactive to active, a licensee must submit:

(a) documentation demonstrating completion of all the continuing education hours required in [NEW RULE II] for the most current renewal year;

(b) license verification from all jurisdictions where the licensee held a license while inactive, including a detailed explanation of all pending or final discipline imposed; and

~~(4)~~(c) satisfactory evidence the applicant was not out of active practice for more than five years. If the applicant has been out of practice for longer than five years, the applicant shall also provide ~~evidence of the following~~ proof of:

~~(a) completion of:~~

(i) completion of a clinical competency course(s) or skills assessment analysis approved by the board; or

(ii) passage of a board-approved regional or state examination within the most recent five years; and ~~.~~

(iii) any other information the board may require for evidence of operative competency.

~~(b) a license verification from all jurisdictions where the applicant is licensed or has held a license;~~

~~(c) certificates of attendance of continuing education pursuant to ARM 24.138.2105 as follows:~~

~~(i) 60 hours of continuing education for a dentist for the three most current renewal years;~~

~~(ii) 36 hours of continuing education for a dental hygienist for the three most current renewal years; or~~

~~(iii) 36 hours of continuing education for a denturist for the three most current renewal years.~~

~~(d) a current CPR, ACLS, or PALS card; and~~

~~(e) any other information the board may require for evidence of operative~~

~~competency.~~

~~(5) Applicants shall take the jurisprudence examination if the applicant has not practiced in Montana within the most recent five years.~~

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: The board is simplifying and streamlining this rule by striking repetitive provisions and simplifying the language. All continuing education (CE) rules have been moved into NEW RULE II that is cited with regard to proof of CE.

24.138.530 LICENSURE ~~OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST~~ FOR VOLUNTEER SERVICE (1) ~~Retired or nonpracticing dentists and dental hygienists~~ Applicants seeking to practice under a volunteer license shall ~~submit a complete application and the following documentation~~ provide:

~~(a) verification of graduation from a dental or dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation (CODA) or its successor;~~

~~(b) verification of licensure from any other state that the applicant is or has been licensed in;~~

~~(c) proof of operative competency by either:~~

~~(i)~~(a) ~~a verified statement that the applicant has actively and competently practiced~~ verification of current licensure in Montana or another jurisdiction ~~within the last five years~~; ~~or~~

~~(ii) if the applicant has been out of practice for longer than five years, the applicant shall provide:~~

(b) verification of active licensure in Montana or another jurisdiction within the previous five years; or

~~(A)~~(c) proof of completion of a board-approved clinical competency course(s) or skills assessment analysis, or board-approved regional or state examination within the last five years; ~~or~~

~~(B) a board-approved regional or state examination within the most recent five years.~~

(d) remains the same.

~~(e) a signed statement that the applicant shall not accept any form of remuneration for any dental or dental hygiene services rendered while in possession of the volunteer license;~~

~~(f)~~(e) ~~provides~~ the name and address of the location(s) where the applicant intends to provide services ~~under a volunteer license to indigent or uninsured patients in underserved or critical need areas~~;

(g) and (h) remain the same but are renumbered (f) and (g).

~~(2) The board shall review applications submitted by applicants with medically diagnosed mental or physical disabilities on a case-by-case basis.~~

(2) Dentists and dental hygienists actively licensed in good standing in another state and seeking to practice in Montana under a restricted temporary volunteer license shall:

(a) provide license verifications(s) from all states where currently licensed;

(b) provide the name and address of the location(s) where the applicant intends to provide services; and

(c) provide dental or dental hygiene services only to individuals served by clinics listed in 37-4-103 (6), MCA.

~~(3) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.~~

(3) Temporary volunteer licenses under (2) are valid for 14 days from the date of issuance.

(4) Renewal fees and late fees or a portion of such fees may be waived for eligible persons applying for licensure under this rule ~~after July 1, 2004, upon approval of the board~~.

~~(5) Volunteer licenses must be renewed by the date set by ARM 24.101.413.~~

AUTH: 37-1-131, 37-4-340, 37-4-341, MCA
IMP: 37-1-131, 37-1-141, 37-4-340, 37-4-341, MCA

REASON: The board is amending this rule after feedback from prospective volunteers that the rule is burdensome and difficult to comply with. The board is amending the rule to allow for easier application of prospective volunteers, and is amending the rule for better readability. The board is also combining temporary volunteer license requirements with retired license requirements to place all requirements for volunteers into one rule.

24.138.906 DENTURIST SCOPE OF PRACTICE ~~-- DENTURES OVER IMPLANTS~~ (1) through (4) remain the same.

(5) All partial denture patients shall be referred to a dentist to determine what is needed prior to the denturist starting service.

(6) Denturists must guarantee all new services completed by the denturist. The guarantee starts from the day of final insertion.

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-102, 37-29-103, 37-29-404, MCA

REASON: The board has combined existing denturist scope of practice rules into a single rule for ease of understanding.

24.138.2301 UNPROFESSIONAL CONDUCT ~~FOR DENTISTS~~ (1) For the purposes of implementing the provisions of 37-1-316, MCA, the board further defines "unprofessional conduct" ~~for dentists~~ as follows:

(a) Continuing to practice ~~dentistry~~ when the licensee's license has been suspended, revoked, or is not currently renewed.

(b) and (c) remain the same.

(d) ~~Failure~~ Failing to maintain an office~~(s)~~ in sanitary conditions consistent with current accepted sterilization and disinfection protocols for treatment rooms, sterilization and laboratory areas, or operating under unsanitary conditions after a warning from the board.

~~(e) Obtaining a fee or other compensation, either directly or indirectly by the representation that a manifestly incurable disease, injury or condition of a person can be cured.~~

(f) remains the same but is renumbered (e).

~~(g)~~(f) Failing to supervise and monitor the actions of all dental auxiliaries, ~~and~~ dental hygienists, and denturist interns in regard to patient care.

(h) remains the same but is renumbered (g).

~~(i)~~(h) ~~Failure~~ Failing to respond to correspondence from the board~~, or to comply with final orders of the board~~.

~~(j)~~(i) Representing or recording ~~as an oral prophylaxis,~~ coronal polishing ~~by itself~~, as oral prophylaxis without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any supragingival and subgingival calculus and gingival irritants ~~deemed necessary for removal by an appropriately licensed dentist or licensed dental hygienist~~.

(k) through (m) remain the same but are renumbered (j) through (l).

~~(n) Failing to seek consultation with those licensees or other health care professionals who have special skills, knowledge, and experience whenever needed to safeguard the welfare of the patient.~~

~~(o)~~(m) ~~Failing to return a patient, if a specialist or consulting dentist, unless the patient expressly reveals a different preference, to the referring dentists, or if none, to the dentists of record for future care~~ Failing to return a patient to the referring licensee or licensee of record, unless the patient requests otherwise.

(p) through (r) remain the same but are renumbered (n) through (p).

~~(s)~~(q) Employing, supervising, or otherwise using more dental hygienists or dental auxiliaries than the dentist can reasonably supervise ~~in keeping with the dentist's ethical and professional responsibilities~~.

~~(t)~~(r) Failing to assure that the radiation source under the dentist's ~~jurisdiction~~ control is used only by individuals competent to use it.

(u) remains the same but is renumbered (s).

~~(v)~~(t) ~~Knowingly suppressing, omitting, or concealing any material fact or law without which an advertisement would be deceptive or misleading~~ Using advertising matter that contains misstatements, falsehoods, misrepresentations, or wording that may in any way reflect against a fellow licensee or other licensed health care provider.

(u) Knowingly suppressing, omitting, or concealing any fact or law without which the advertisement would be deceptive or misleading.

(v) Failing to adequately maintain complete records of each patient

(w) Administering, dispensing, or prescribing approved topical agents in violation of board rules.

(x) Extracting teeth or performing dental treatment upon the written or verbal prescription of someone other than a licensed dentist.

(y) Failing to comply with a monitoring agreement entered into with the board's professional assistance program.

(z) Failing to comply with the provisions of the Guidelines for Infection Control in Dental Health-Care Settings, 2003.

(aa) Failing to pass an anesthesia permit inspection under ARM 24.138.3227.

AUTH: 37-1-319, 37-4-205, 37-4-408, 37-29-201, 75-10-1006, MCA
IMP: 37-1-316, 37-1-319, 37-4-101, 37-4-405, 37-4-408, 37-29-402, 37-29-403, 75-10-1006, MCA

REASON: The board is combining all unprofessional conduct rules into one rule, so as not to repeat identical provisions or duplicate statute. The board is further moving advertising, infection control, infectious waste, and bloodborne pathogen requirements into the unprofessional conduct rules. The board is adding (aa) to clarify failing an anesthesia permit inspection due to lack of compliance with those regulations is unprofessional conduct. Finally, the board is cleaning up outdated language for ease of understanding.

24.138.2703 RESPONSIBILITIES OF ~~BOARD APPROVED REHABILITATION~~ PROFESSIONAL ASSISTANCE PROGRAM (1) The ~~board approved rehabilitation~~ professional assistance program ~~(program)~~ as set forth in 37-4-311 and 37-4-312, MCA, shall ~~fulfill terms to be set by contract with the board to include, but not limited to the following~~:

(a) provide two tracks for assistance of licensees or license applicants under the board's jurisdiction:

(i) and (ii) remain the same.

(b) provide recommendations to ~~the~~ licensees or license applicants for appropriate evaluation and treatment facilities;

(c) recommend ~~to the board~~ terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and

(d) remains the same.

(2) Upon the discharge of a participant from the program, the program shall report to the board the discharge of the participant, and if applicable, provide to the board:

(a) verification of the participant's satisfactory completion of monitoring and program requirements as appropriate for public safety;

(b) verification of the participant's completion of board final order terms and conditions with recommendation of the program for discharge; and/or

(c) notification that the participant is transferring to another jurisdiction.

(2) and (3) remain the same but are renumbered (3) and (4).

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is amending this rule to include the responsibilities of the assistance program to manage intake, monitoring, and discharge, as well as the reporting to the board requirements. These requirements were previously contained in multiple rules, so the board is combining for ease of understanding and repealing the extraneous rules.

24.138.2707 PROTOCOL FOR SELF-REPORTING TO A ~~BOARD APPROVED REHABILITATION~~ MEDICAL ASSISTANCE PROGRAM (1) and (2)

remain the same.

~~(3) The program shall notify and disclose to the board the identity of a licensee participating in the program, along with providing to the board all relevant facts and documentation, when any of the following occur:~~

~~(a) the participant engages in actionable behavior as described in 37-4-312, MCA;~~

~~(b) the participant is noncompliant with the aftercare monitoring contract; or~~

~~(c) there are creditable allegations that patient safety or public harm is at risk by the participant's continued practice.~~

(4) remains the same but is renumbered (3).

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is amending this rule to repeal unnecessary sections that repeat 37-4-312, MCA.

24.138.2710 PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees or license applicants under the jurisdiction of the board who participate in the program ~~as defined in 37-4-311, MCA,~~ under the disciplinary track shall be reported to the board by name.

(2) Licensees or license applicants are admitted to the disciplinary track through one or more of the following:

(a) remains the same.

(b) as a result of a sanction imposed by a board final order~~;~~.

~~(c) as a result of noncompliance with the licensee or license applicants' aftercare contract with the program; or~~

~~(d) as determined by the board and/or program.~~

(3) The program shall also report licensees who have discharged from the program.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is striking (2)(c) and (d) as a requirement to participate in the disciplinary track is a sanction, which can only be imposed after a board final order- either as a disciplinary action or as a licensing decision.

24.138.2712 PROTOCOL FOR NONDISCIPLINARY TRACK (1) A licensee or license applicant under the jurisdiction of the board who participates in the program ~~as defined in 37-4-311 and 37-4-312, MCA,~~ under the nondisciplinary track shall be reported to the board by participant number.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is striking the unnecessary reference to statute contained in this rule.

24.138.3003 ADVERTISING ~~RECORDS AND~~ RESPONSIBILITY (1) Each ~~dentist~~ licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision also shall include any licensed professional employees acting as an agent of such firm or entity.

(2) All advertisements are presumed to have been approved by the ~~dentist~~ licensee named therein.

~~(3) A recording of every advertisement communicated by electronic media and a copy of every advertisement communicated by print media, as well as a copy of any other form of advertisement, indicating the date, place and duration of the advertisement shall be retained by the dentist for a period of two years from the last date of broadcast or publication and shall be made available to the board or its representative upon request.~~

~~(4) When placing advertising, the dentist must possess such information which, when produced, would substantiate the truthfulness of any assertion or representation of material fact made in the advertisement.~~

(3) A Montana licensed dentist listing or advertising the dentist's services under any specialty practice dental category in ARM 24.138.3101 must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist.

(4) Licensees must maintain records of advertising, including a copy of the advertisement, for a period of two years after publication.

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: The board is amending this rule to remove unnecessary wording, and to repeal provisions that duplicate ARM 24.138.2301.

24.138.3101 GENERAL STANDARDS FOR SPECIALTIES ~~(1) The following are included within the standards of the National Commission on Recognition for Dental Specialties and Certifying Boards for determining what dentists have the education experience and other appropriate requirements for announcing specialization and limitation of practice:~~

~~(a)~~(1) ~~The~~ Any specialty area(s) of dental practice and ~~an~~ appropriate certifying boards must be approved by the National Commission on Recognition ~~for~~ of Dental Specialties and Certifying Boards. The specialty areas of dental practice approved by the National Commission on Recognition of Dental Specialties and Certifying Boards and the designation for ethical specialty announcement limitation of practice are:

(a) dental public health;

(b) endodontics;

(c) oral pathology;

(d) oral and maxillofacial surgery;

(e) orthodontic dentofacial orthopedics;
(f) pedodontics (dentistry for children);
(g) periodontics;
(h) prosthodontics;
(i) oral and maxillofacial radiology;
(j) oral medicine; and
(k) dental anesthesiology.

(b) remains the same but is renumbered (2).

~~(c) The practice carried on by dentists who announce as specialists shall be limited exclusively to the specialty area(s) of dental practice announced by the dentist.~~

(3) A licensee shall not advertise using the terms "specialist" or "specializing" unless the licensee has met the board standards for specialization as set forth in this rule.

(4) A licensee who possesses a verifiable combination of education and experience is not prohibited from including in the licensee's practice one or more branches of dentistry listed in (1).

AUTH: 37-4-205, MCA
IMP: 37-4-205, 37-4-301, MCA

REASON: The board is combining ARM 24.138.3101 and 24.138.3102 to include all specialty requirements in a single rule. The board is repealing the requirement that specialists may only practice in the area of specialty as overregulation. Specialists receive the same training as dentists and are qualified to perform the same work.

24.138.3221 MINIMUM QUALIFYING STANDARDS ~~(1) With respect to deep sedation/general anesthesia, no dentist shall be permitted to administer deep sedation/general anesthesia during a dental procedure or dental-surgical procedure, unless and until he or she satisfies the qualifications set forth in 37-4-511, MCA.~~

~~(a) No dentist shall be permitted to administer deep sedation/general anesthesia until he or she has satisfactorily completed residencies~~

(1) A Montana licensed dentist must possess a permit to administer moderate sedation or deep sedation/general anesthesia.

(2) All requirements for the use of moderate sedation or deep sedation/general anesthesia apply, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than minimal sedation.

(3) A deep sedation/general anesthesia permit is required to administer or employ any agent(s) which has a narrow margin for maintaining consciousness, including, but not limited to, ultrashort-acting barbiturates, including, but not limited to, sodium methohexital, thiopental, propofol, ketamine, etomidate, and similarly acting drugs, or quantity of agent(s), or technique(s), or any combination, thereof, that would possibly render a patient deeply sedated or generally anesthetized.

(4) All applicants for deep sedation/general anesthesia permits must have:

(a) completed a residency accredited by the Commission on Dental Accreditation in one of the following areas:

(i) remains the same.

(ii) a minimum of two years in an advanced general dentistry education program in dental anesthesiology~~.~~; and

(b) completed an advanced course in cardiac life support within two years of the date of permit application. Web-based courses must include a hands-on lab or megacode portion of training.

~~(2) Dentists providing moderate sedation or deep sedation/general anesthesia must present evidence of successful completion of an advanced course in cardiac life support within the three most recent years. Web-based courses must include a hands-on lab or megacode portion of training.~~

~~(3) With respect to moderate sedation, no dentist shall administer drugs to achieve the state known as moderate sedation during a dental procedure or a dental-surgical procedure, unless the dentist has received formal training in moderate sedation techniques from an institution, organization, or training course. If training for moderate sedation is through continuing education, proof of course content must accompany the initial application in the form of a course outline or syllabus. A minimum of 60 hours of instruction plus management of at least 20 dental patients, by the intravenous route, per participant, are required to achieve competency in moderate sedation techniques. The dentist must furnish evidence of having completed this training.~~

~~(a) All requirements for the use of moderate sedation or deep sedation/general anesthesia will apply as indicated, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than minimal sedation.~~

(5) All applicants for moderate sedation permits must have:

(a) received formal training in moderate sedation techniques from an institution, organization, or training course. If training for moderate sedation is through continuing education, proof of course content must accompany the initial application in the form of a course outline or syllabus; and

(b) a minimum of 60 hours of instruction plus management of at least 20 dental patients, by the intravenous route.

~~(4)~~(6) ~~With respect to inhalation sedation, no dentist shall use nitrous oxide/oxygen on a patient before completing~~ Applicants seeking to use inhalation sedation must:

(a) complete a course of instruction of a minimum of 14 hours, including a clinical component. This course of instruction may be completed as part of the predoctoral dental education program or in a postdoctoral continuing education competency course~~.~~; or

~~(a) A dentist who practices dentistry in Montana who can provide satisfactory evidence of~~

(b) demonstrate competence and skill in administering nitrous oxide/oxygen sedation by virtue of experience and/or comparable alternative training ~~shall be presumed by the Montana Board of Dentistry to have appropriate credentials for the use of nitrous oxide/oxygen sedation~~.

~~(5)~~(7) ~~In order to administer enteral minimal and/or combination inhalation sedation the dentist~~ Applicants seeking to administer enteral minimal and/or combination inhalation sedation must complete a minimum of 16 hours of training,

including a clinical component. Training must include the treatment of a compromised airway and other life-threatening emergencies. The course may be completed in a predoctoral dental education curriculum or in a postdoctoral continuing education competency course.

(a) and (b) remain the same.

~~(6) No dentist shall administer or employ any agent(s) which has a narrow margin for maintaining consciousness, including, but not limited to, ultrashort-acting barbiturates, including, but not limited to, sodium methohexital, thiopental, propofol, ketamine, etomidate, and similarly acting drugs, or quantity of agent(s), or technique(s), or any combination, thereof, that would possibly render a patient deeply sedated or generally anesthetized, unless he or she holds a valid deep sedation/general anesthesia permit issued by the board.~~

(8) Applicants who meet all requirements for a moderate sedation or deep sedation/general permit with the exception of having passed an initial inspection may be issued a temporary permit to administer moderate sedation or deep sedation/general prior to the initial inspection.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board is amending this rule to remove unnecessary words. The board is also putting all requirements for each level of permit together for ease of understanding by licensees and the public. Language regarding the process for the temporary permit that is issued prior to initial inspection has been moved from the repealed ARM 24.138.3219 to (8). The board is requiring that the cardiac life support training in new (4)(b) have been completed within the last two years instead of three in order to ensure current training and standards for patient safety.

24.138.3223 MINIMUM MONITORING STANDARDS (1) Minimum standards for monitoring ~~patients for~~ deep sedation/general anesthesia patients shall include the following:

(a) remains the same.

(b) intraoperative:

(i) through (iii) remain the same.

(iv) ~~an~~ continuously running intravenous line;

(v) through (2) remain the same.

(3) Minimum standards for monitoring minimal sedation patients shall include the following:

(a) ~~pre-op~~ preoperative:

(i) through (b) remain the same.

(4) ~~During dental procedures, the facility~~ During dental procedures that require deep sedation/general anesthesia as described in (1) or moderate sedation as described in (2), the procedure must be ~~staffed~~ attended by ~~supervised monitoring personnel, all of whom are capable of handling procedures, problems, and emergency incidents, and have successfully completed the American Heart Association's Basic Life Support for Healthcare Providers, or its equivalent.~~ qualified individuals as listed below:

(a) ~~With respect to a~~ When administering deep sedation/general anesthesia ~~facility~~, in addition to the ~~dentist~~ permit holder and ~~dental assistant~~ an auxiliary, there must be at least one person present to monitor vital signs during the procedure. That person must be:

(i) through (v) remain the same.

(b) ~~When moderate sedation is used, the dentist shall be qualified and permitted to administer the drugs and appropriately monitor the patient, and have successfully completed a course in advanced cardiac life support. In addition to the dentist,~~ When administering moderate sedation, in addition to the permit holder at least one other person on staff and present ~~in the office~~ must ~~have successfully completed the American Heart Association Basic Life Support for Healthcare Providers, or its equivalent~~ be a trained healthcare professional.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA
IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-408, 37-4-511, MCA

REASON: This rule is being clarified to more accurately reflect that the board licenses people, not facilities, and it is those individual licensees who are held accountable under the board's regulations. It has also been amended to remove redundant language and for simplicity and better readability.

24.138.3225 ~~FACILITY~~ EQUIPMENT STANDARDS (1) A permit holder performing deep sedation/general anesthesia ~~facility under these rules~~ must ~~contain~~ maintain a minimum of equipment, supplies, and drugs onsite, including, but not limited to, the following:

(a) through (k) remain the same.

(2) A permit holder performing moderate sedation ~~facility under these rules~~ must ~~contain~~ maintain a minimum of equipment, supplies, and drugs onsite, including, but not limited to, the following:

(a) through (e) remain the same.

(f) defibrillator;

(f) through (h) remain the same but are renumbered (g) through (i).

(3) A ~~facility in which~~ licensed dentist administering nitrous oxide/oxygen ~~is used~~ must ~~contain~~ maintain a minimum of equipment and supplies onsite appropriate to meet emergencies.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: This rule is being clarified to more accurately reflect that the board licenses people, not facilities, and it is those individual licensees who are held accountable under the board's regulations. The requirement for licensees providing moderate sedation to also have an electrocardiac monitor and defibrillator is necessary as the patient could potentially slip into deep sedation and a defibrillator could be necessary, just as it is with deep anesthesia/general anesthesia.

24.138.3227 ONSITE INSPECTION OF PERMIT HOLDERS ~~FACILITIES~~

(1) Each ~~facility where~~ moderate sedation or deep sedation/general anesthesia permit holder ~~is to be provided~~ shall be inspected initially, and at intervals not to exceed five years, by a qualified inspector appointed by the board. Any ~~dentist~~ permit holder whose facility is to be inspected shall be notified at least 30 days prior to the inspection, or sooner if mutually agreed. The name of the inspector shall be provided to the dentist.

(2) The onsite inspection shall include ~~a test of the applicant and the applicant's staff on their abilities to recognize~~:

(a) demonstration of:

(i) recognition and ~~manage~~ management of complications likely to occur, considering the techniques being used~~. Early recognition of complications will be emphasized. The facility must be inspected for~~;

(ii) knowledge of respective roles in normal operating procedures and in various emergency situations; and

(iii) proficiency in handling emergency situations;

(b) the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided~~. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations.~~ ; and

(c) ~~The inspector shall evaluate office staff in proficiency in handling emergency procedures and evaluate~~ evaluation of the accuracy of anesthesia record-keeping.

(3) ~~If the inspector finds deficiencies present in the inspected office, the facility shall be given 30 days to address the deficiencies. If, at the completion of this 30-day period, the deficiencies have not adequately been rectified, the board will limit the practitioner's permit to apply moderate sedation or deep sedation/general anesthesia only in qualifying facilities.~~ If the inspector identifies violations, the permit holder may be subject to disciplinary action by the board.

~~(4) If serious life-threatening deficiencies are found by the inspector, the board will immediately limit the practitioner's permit by refusing to permit the administration of moderate sedation or deep sedation/general anesthesia on the premises.~~

~~(5)~~(4) ~~An individual~~ A licensee who provides anesthesia at multiple facilities must be inspected at one facility only. The ~~individual~~ licensee must ~~state~~ attest all facilities are compliant for the equipment requirements.

~~(6) Five-year reinspections may be performed by one inspector, unless the dentist being inspected, or board, requests two inspectors. Reinspections for moderate sedation permits may be performed by dentists holding a moderate sedation permit or a deep sedation/general anesthesia permit. For deep sedation/general anesthesia permits, reinspections must be performed by another dentist holding a deep sedation/general anesthesia permit.~~

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board is amending this rule for clearer wording and indication of expectations of licensees and to align with the disciplinary authority of the board.

Further, the board is amending language to reflect that the board licenses individuals, not the facilities where licensees practice.

24.138.3231 REPORTING ADVERSE OCCURRENCES (1) All actively licensed dentists ~~engaged in the practice of dentistry in Montana~~ must submit written reports to the board within seven days of any incident, injury~~, or death~~ resulting in temporary or permanent physical or mental disability, or death involving the application of ~~minimal~~ sedation~~, moderate sedation, deep sedation, general anesthesia, or nitrous oxide/oxygen sedation, administered alone or in conjunction with another oral agent,~~ or anesthesia to any dental patient ~~for whom said dentist, or any other dentist, has rendered any dental or medical service~~ during dental services. Routine hospitalization to guard against postoperative complications or for patient comfort need not be reported where complications do not~~, thereafter,~~ result in injury or death~~, as hereinbefore set forth~~.

(2) The report required by this rule shall include, but not be limited to, the following information:

(a) through (h) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board is amending this rule to remove extra words for easier reading by licensees and the public.

6. The rules proposed to be repealed are as follows:

24.138.206 DENTAL HYGIENIST COMMITTEE

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: The board is striking requirements for this standing committee as unnecessary. The board has authority to convene committees when needed to assist the board in conducting its business.

24.138.208 DENTURIST COMMITTEE

AUTH: 37-29-201, MCA
IMP: 37-29-201, MCA

REASON: The board is striking requirements for this standing committee as unnecessary. The board has authority to convene committees when needed to assist the board in conducting its business.

24.138.306 TEETH WHITENING

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-101, MCA

REASON: The board is repealing this rule, as the Legislature sets the scope of practice of dentistry.

24.138.403 MANDATORY CERTIFICATION

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-321, 37-29-201, 37-29-401, MCA

REASON: The board determined it is reasonable to combine the ongoing requirement for life saving certification with the ongoing requirement for continuing education. The two rules can be combined for standardization and reduction purposes.

24.138.414 DISPLAY OF LICENSES

AUTH: 37-4-205, 37-29-201, MCA
IMP: 37-4-205, 37-4-326, 37-29-201, MCA

REASON: The board is repealing this rule as unnecessary since the board does not license practices or facilities, only practitioners. The public can use the online license lookup system to view the current license status of any individual twenty-four hours a day.

24.138.415 NINETY-DAY GUARANTEE REQUIRED BY DENTURISTS

AUTH: 37-29-201, MCA
IMP: 37-29-404, MCA

REASON: The board is repealing this rule and moving it to ARM 24.138.906 so that all denturist provisions are in the same rule for ease of readability and understanding.

24.138.416 PRIOR REFERRAL FOR PARTIAL DENTURES

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-29-403, MCA

REASON: The board is repealing this rule and moving it to ARM 24.138.906 so that all denturist provisions are in the same rule for ease of readability and understanding.

24.138.417 DENTAL SCREENINGS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-4-101, 37-4-205, 37-4-401, MCA

REASON: The board is repealing this rule as unnecessary. Board staff does not currently receive questions about whether dental health screenings constitute the practice of dentistry and does not anticipate an increase in complaints related to dental health screenings.

24.138.418 INFECTION CONTROL

AUTH: 37-1-131, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1005, MCA

REASON: The board moved this requirement to its unprofessional conduct rule for ease of readability.

24.138.430 FEE ABATEMENT

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board is moving this rule into ARM 24.138.301 so all fee-related information is contained in the same rule.

24.138.504 APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-131, 37-4-301, 37-4-402, MCA

REASON: The board is repealing this rule as unnecessary and covered by ARM 24.138.502 and 24.138.503.

24.138.505 DENTIST LICENSURE BY CREDENTIALS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-1-304, 37-4-301, MCA

REASON: The board is repealing this rule as unnecessary and has moved all application requirements into NEW RULE I. It is reasonably necessary to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized application procedures for all boards.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-1-304, MCA

REASON: The board is combining all application rules into NEW RULE I for ease of

understanding. It is reasonably necessary to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized application procedures for all boards.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-131, 37-4-401, 37-4-402, MCA

REASON: The board is moving all qualifications for dental hygienists into one rule for readability and ease of finding information.

24.138.512 DENTURIST INTERNSHIP

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, MCA

REASON: The board combined the internship requirements with the requirements for licensure as a denturist for ease of reading and understanding.

24.138.513 DENTAL HYGIENISTS – TEMPORARY PRACTICE PERMITS

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA
IMP: 37-1-131, 37-1-305, 37-1-319, 37-4-402, MCA

REASON: The board is repealing this rule as duplicative of 37-1-305, MCA.

24.138.525 REACTIVATION OF AN EXPIRED LICENSE

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-141, MCA

REASON: The board is repealing this rule to standardize reactivation of expired licenses with the process under ARM 24.101.408.

24.138.540 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.138.601 RESTRICTED TEMPORARY LICENSURE OF NONRESIDENT VOLUNTEER DENTISTS AND DENTAL HYGIENISTS

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA
IMP: 37-1-131, 37-1-141, 37-4-341, MCA

REASON: The board is repealing this rule as unnecessary and containing similar information as ARM 24.138.530. The board has combined the two rules so that volunteer license information is contained in a single rule.

24.138.603 SCOPE OF TREATMENT FOR TEMPORARY VOLUNTEER LICENSE

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA
IMP: 37-1-131, 37-4-341, MCA

REASON: The board has combined its rules regarding volunteer licensing into one rule.

24.138.2101 DEFINITION OF CONTINUING EDUCATION

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA
IMP: 37-1-306, 37-1-319, MCA

24.138.2102 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION

AUTH: 37-1-319, 37-4-205, 37-4-401, MCA
IMP: 37-1-306, 37-1-319, 37-4-401, MCA

24.138.2103 SUBJECT MATTER ACCEPTABLE FOR DENTURIST CONTINUING EDUCATION

AUTH: 37-1-319, 37-29-201, MCA
IMP: 37-1-306, 37-29-306, MCA

24.138.2104 REQUIREMENTS AND RESTRICTIONS

AUTH: 37-1-319, 37-4-205, 37-4-401, 37-29-201, MCA
IMP: 37-1-306, 37-1-319, 37-4-401, MCA

24.138.2105 CONTINUING EDUCATION – AUDIT

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

24.138.2106 EXEMPTIONS AND EXCEPTIONS

AUTH: 37-1-319, MCA
IMP: 37-1-306, 37-1-319, MCA

REASON: The board is repealing all continuing education rules and moving the requirements into NEW RULE II. The board is simplifying and streamlining continuing education requirements to standardize them with other licensing boards. The board believes its licensees can select quality continuing education without the board's rules being overly specific. The board is striking the provision on random audits as it unnecessarily duplicates the statutory provisions of 37-1-306, MCA.

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

AUTH: 37-1-136, 37-1-319, 37-29-201, 75-10-1006, MCA
IMP: 37-1-316, 37-1-319, 37-29-402, 37-29-403, 75-10-1006, MCA

24.138.2303 UNPROFESSIONAL CONDUCT FOR DENTAL HYGIENISTS

AUTH: 37-1-319, 37-4-205, 37-4-408, 75-10-1006, MCA
IMP: 37-1-316, 37-1-319, 37-4-405, 37-4-408, 75-10-1006, MCA

24.138.2701 REHABILITATION PROGRAM PURPOSE

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is repealing this rule as unnecessary repetition of 37-4-312, MCA.

24.138.2705 REPORTING OF SUSPECTED IMPAIRMENT

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is repealing this rule as unnecessary repetition of 37-4-312, MCA.

24.138.2714 REPORTING TO THE BOARD

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is repealing this rule as unnecessary, as the reporting requirements are in ARM 24.138.2710 and 24.138.2712, and are covered by the contract.

24.138.2716 DISCHARGE REQUIREMENTS

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is repealing this rule as unnecessary after moving the discharge reporting requirements to ARM 24.138.2703, which already contained the program's reporting requirements to the board.

24.138.2719 RELAPSE

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board is repealing this rule as unnecessary. The assistance program's contract requires monitoring of licensees. Spelling out the requirements for the handling of relapses takes away from the professional judgment of the monitoring program and does not allow for individual circumstances of the monitored licensees.

24.138.3001 ADVERTISING FEE INFORMATION

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: The board is repealing advertising rules as being overly regulatory. The board has included the necessary provisions governing the conduct of advertising in ARM 24.138.2301.

24.138.3002 ADVERTISING CONTENT

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: The board is repealing advertising rules as being overly regulatory. The board has included the necessary provisions governing the conduct of advertising in ARM 24.138.2301.

24.138.3102 SPECIALTY ADVERTISING

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: The board is repealing this rule as unnecessary. Advertising provisions are covered in ARM 24.138.2301 and 24.138.3003, and this rule largely repeats information contained in ARM 24.138.3101.

24.138.3211 DEFINITIONS RELATED TO ANESTHESIA

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-4-101, 37-4-511, MCA

REASON: Reasonable necessity exists to repeal this rule as part of the effort to simplify and shorten the administrative rules. Presently, the board has multiple definitions rules. This proposal consolidates those definitions into a single rule for ease of use by the public.

24.138.3213 EFFECT OF 2011 STATUTE AND RULE AMENDMENTS ON CURRENTLY ISSUED ANESTHESIA PERMITS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-4-101, 37-4-511, MCA

REASON: The board is repealing this rule as all permits previously obtained under this rule have been converted, and any new applicants for anesthesia permits are required to demonstrate they meet the qualifications in ARM 24.138.3221.

24.138.3215 ANESTHESIA FEE SCHEDULE

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-134, 37-4-101, 37-4-511, MCA

REASON: Reasonable necessity exists to repeal this rule as part of the effort to simplify and shorten the administrative rules. Presently, the board has multiple fee rules. This proposal consolidates those definitions into a single rule for ease of use by the public.

24.138.3217 PRACTICE OF ANESTHESIA

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board is repealing this rule as unnecessary. The requirement to hold a permit to administer anesthesia is covered in ARM 24.138.3221.

24.138.3219 PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board is repealing this rule as unnecessary. The requirement to hold a permit is covered in ARM 24.138.3221.

24.138.3229 ANESTHESIA CONTINUING EDUCATION

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: Reasonable necessity exists to repeal this rule as part of the effort to simplify and shorten the administrative rules. Presently, the board has multiple continuing education rules. This proposal consolidates those requirements into a single rule for ease of use by the public.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 24, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
ALLEN CASTEEL, LD, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 37.49.601 and 37.49.602 pertaining to IV-E foster care services	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to repeal the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 10, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The department proposes to repeal the following rules:

37.49.601 IV-E FOSTER CARE ELIGIBILITY: PLACE OF APPLICATION

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-131, MCA

37.49.602 IV-E FOSTER CARE ELIGIBILITY: PERIODIC REDETERMINATIONS OF ELIGIBILITY

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-131, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (DPHHS) is proposing to repeal ARM 37.49.601 and 37.49.602.

ARM 37.49.601 was adopted in 1999, when the Department of Social and Rehabilitative Services (SRS), Office of Public Assistance (OPA) was responsible for determining the Title IV-E eligibility for youth in foster care.

In 2004, however, DPHHS established a Title IV-E Eligibility Unit in its Child and Family Services Division (CFSD). Responsibility for determining Title IV-E eligibility of foster youth was shifted to CFSD's Title IV-E Eligibility Unit. This change was made in response to the results of Montana's first Title IV-E review conducted in September 2000 by the federal Administration on Children, Youth, and Families (ACYF). OPA currently has no role in this process. Accordingly, DPHHS proposes to repeal ARM 37.49.601.

ARM 37.49.602, also adopted in 1999, states that the child's IV-E eligibility shall be investigated and redetermined every six months. When adopted, these requirements concerning IV-E eligibility determinations followed federal guidelines set forth by the Administration on Children, Youth, and Families (ACYF), a component of the Administration for Children and Families, an operating division of the U.S. Department of Health and Human Services.

Title IV-E eligibility and means testing are determined using the criteria in the State of Montana's 1996 Aid to Families with Dependent Children (AFDC) State Plan. The 1996 AFDC State Plan required an eligibility redetermination every six months. ACYF removed the Title IV-E redetermination requirement in 2010. CFSD's Title IV-E Eligibility Unit practice and Montana's Title IV-E State Plan were changed to reflect ACYF's guidance that redeterminations are no longer needed, but corresponding changes to administrative rules did not happen. Repealing ARM 37.49.602 will align CFSD's Title IV-E regulations with ACYF guidelines, current Title IV-E eligibility determination practices, and Montana's Title IV-E State Plan.

Fiscal Impact

The proposed rule repeals would have no anticipated fiscal impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 24, 2024. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bailey Yuhas at the above address no later than 5:00 p.m., on May 24, 2024.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative

Register. Ten percent of those directly affected has been determined to be 210 kids based on 2,100 kids currently in foster care in Montana.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Mark Prichard
Mark Prichard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 42.11.402, 42.12.101, 42.12.106, 42.12.109, 42.12.110, 42.12.111, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.149, 42.12.150, 42.12.151, 42.12.152, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.106, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.211, 42.13.405, 42.13.601, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, 42.13.1202 pertaining to the implementation of alcoholic beverage legislation enacted by the 68th Montana Legislature	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On June 4, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules. The auditorium is most readily accessed by entering through the north (basement) or the west (main) doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on May 3, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I ADDITIONAL RETAIL SERVICE BUILDINGS OR STRUCTURES (1) A golf course beer and wine licensee or an all-beverages licensee operating a license at a golf course may use an additional building or structure, one per nine holes of the golf course that is designed to serve golfers alcoholic beverages during the course of play.

(2) An all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in:

(a) a building that constitutes the primary indoor lodging quarters of a hotel or other short-term lodging facility;

(b) a permanent, licensed alcohol service structure in a swimming area separate from the main licensed premises;

(c) up to two additional permanent structures on a ski hill separate from the main licensed premises; or

(d) an additional structure that constitutes the clubhouse or primary indoor recreational quarters of the golf course separate from the main licensed premises.

(3) The department may approve a licensee for storage of alcoholic beverages at an additional retail service building if adequate physical safeguards prevent access by individuals other than the licensee or its employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of an additional retail service building or structure:

(a) a completed additional retail service building request form;

(b) the application fee provided in 16-3-302, MCA, as applicable;

(c) the processing fee provided in ARM 42.12.111, as applicable;

(d) a copy of the floor plan for each proposed additional retail service building or structure;

(e) a plat-style map showing the location of each proposed additional retail service building or structure on the licensee's property;

(f) documentation of the licensee's possessory interest in the proposed additional retail service building or structure;

(g) evidence of approvals from state or local officials that the proposed additional retail service building or structure meets building, health, and fire code requirements, as required by state or local law; and

(h) any additional documentation the department deems reasonably necessary to approve the licensee's request.

(5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of the proposed additional retail service building or structure and review the inspection findings.

(6) The department will notify the licensee, in writing, of its approval or denial of the additional retail service building or structure.

(7) Upon approval, an updated license will be issued and reflect the location of any additional retail service building or structure. The licensee must display a copy of the license in a prominent place at any additional retail service building or structure.

(8) No alcoholic beverages may be stored or served by a licensee at a proposed additional retail service building or structure prior to receiving department approval.

AUTH: 16-1-303, MCA
IMP: 16-3-302, MCA

REASONABLE NECESSITY: The department proposes to adopt NEW RULE I which is necessary to implement House Bill 97 (2023) (HB 97) and House Bill 539 (2023) (HB 539) relative to the expansion of allowable service areas and storage in additional buildings and structures that may be contiguous or noncontiguous to a licensee's main licensed premises.

HB 97 allows a golf course beer and wine licensee or an all-beverages licensee who uses a license at a golf course the ability to sell and serve alcoholic beverages from additional buildings or structures on the golf course upon payment of a fee and approval by the department.

HB 539 allows an all-beverages licensee or a resort all-beverages licensee the ability to sell and serve alcoholic beverages from additional buildings, separate from the licensed premises, such as additional ski buildings, pool buildings, and golf clubhouses.

NEW RULE I proposes what the department believes are reasonably necessary requirements, such as those proposed in (4) through (8), for it to approve these additional buildings and are like other approval processes for additional alcoholic beverage service and storage areas.

The fiscal impact analysis for the processing fee described in (4)(c) is described below with the department's fee proposals for ARM 42.12.111.

NEW RULE II COLOCATED LICENSE – CONDITIONS FOR OPERATING

(1) In addition to the conditions for operating the license types provided in ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, and 42.13.1104, a colocated licensee shall:

(a) provide and serve through its retail license, alcohol beverages that were produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the operation of the manufacturing business at the colocated premises. This includes sufficient on-hand inventory to meet the demand of the public;

(b) store alcoholic beverages in compliance with applicable federal laws; and

(c) only deliver alcoholic beverages to retail licenses, including other retail licenses owned by the licensee, pursuant to the limitations set forth in 16-3-214 and 16-3-411, MCA.

(2) A manufacturing licensee is responsible for paying alcoholic beverage taxes and filing any required returns for any alcoholic beverages transferred from the manufacturing area to the retail area at the colocated license.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to adopt NEW RULE II which is necessary to implement HB 305. Because colocated licenses involve manufacturing and limited rights to distribute beer or wine under 16-3-214 and 16-3-411, MCA, respectively, it is necessary for the department to adopt NEW RULE II to

include operating conditions requirements for colocated licensees that are consistent with both manufacturing and retail license requirements provided in the Alcoholic Beverage Code, the administrative rules, and federal law.

NEW RULE III GUEST RANCHES (1) An all-beverages licensee, an on-premises consumption beer and wine licensee, or an applicant for an all-beverages license or an on-premises consumption beer and wine license operating its license at a guest ranch, as described in 16-3-302(5), MCA, shall submit the following to the department, at its sole expense, and in addition to the requirements of ARM 42.12.101:

(a) a plat-style map that accurately describes the guest ranch property including all indoor and outdoor portions of the premises; the permanent building where alcoholic beverages will be served; all other temporary, mobile, or partial structures; and indicators of the property's boundaries;

(b) a written description of the overnight lodging, dining, and onsite outdoor recreational activities offered at the guest ranch;

(c) a written description of the property line if a perimeter barrier is not used to confine the service of alcoholic beverages only to those areas under control of the licensee; and

(d) any other documents the department deems reasonably necessary to reach a final decision.

(2) In addition to the documents listed in (1), an applicant for a new license operating at a guest ranch must also comply with the applicable licensure requirements under the Alcoholic Beverage Code and ARM 42.12.101.

(3) If the documents required in (1) and (2), as applicable, are not provided, the department will notify the licensee or applicant, in writing, and provide an opportunity to correct any stated deficiencies.

(4) The department will notify the licensee or applicant, in writing, of the approval or denial of the guest ranch operation.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to adopt NEW RULE III which is necessary to implement other statutory changes under HB 539. HB 539 adopted a statutory definition in 16-1-106, MCA, for "guest ranch," as it pertains to the operation of an alcoholic beverages license, and expanded the conditions for retail on-premises consumption in 16-3-302, MCA, to include a guest ranch. Based on these changes, it is necessary for the department to adopt NEW RULE III to provide licensee or applicant compliance requirements for guest ranch operations that are consistent with other retail license requirements provided in the Alcoholic Beverage Code and the administrative rules.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.11.402 INVENTORY POLICY (1) Liquor products that can be obtained without substantial inventory investment to the department will be made available for sale to state agency liquor stores based on historical demand.

(2) Each product a vendor seeks to sell in Montana must be approved by the department. In order to consider the product for approval, the department must receive a picture copy of the product's primary packaging.

(3) Liquor products are a mature product category, restricted by law to only consumers age 21 or older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a liquor product that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling and/or primary packaging that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

(i) aerosol cans; or

~~(ii) gelatin cups;~~

~~(iii)~~ (ii) hollow candies; ~~or~~

~~(iv) mason jars that contain fruit;~~

(b) uses flavors that are designed to target or particularly appeal to underage persons, such as:

(i) bubble gum; or

(ii) cotton candy;

(c) contains graphics or elements that:

(i) are designed to target or particularly appeal to underage persons;

(ii) minimizes, fails to identify, or disguises that the product contains alcohol; or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption;

(d) requires specialized handling requirements such as frozen or refrigerated products; or

(e) is in powdered or crystalline form.

(4) Products will not be made available in the state of Montana through the state liquor warehouse if the container, flavor, label, or advertising contains inappropriate or illegal content.

AUTH: 16-1-303, MCA
IMP: 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.11.402 to align the rule with the amendment of 16-1-303, MCA, by House Bill 455 (2023). Under the revised law, the department may not prohibit liquor product that is sold in gelatin cups that are shelf stable and liquid at room temperature.

The department also proposes to remove the prohibition of products in mason jars that contain fruit because this packaging variation has become more prevalent for suppliers, and other states that have allowed this packaging report little to no public harm from its use.

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell, manufacture, or distribute alcoholic beverages shall be made to the department upon forms supplied by the department or through the department's licensing portal. An abbreviated application may be used for license modifications as specified in ARM 42.12.118. In all other cases, the application process specified below shall be followed.

(2) Applications for licenses shall be in the names of all persons who will have an ownership interest in the business to be operated under the license, as required in 16-4-401, MCA.

(3) In addition to the license application, as applicable, the applicant shall submit:

(a) any processing fees required by ARM 42.12.111 and the license fee required by 16-4-420 or 16-4-501, MCA;

(b) a copy of the proposed agreement to transfer an ownership interest;

(c) proof that the applicant has possessory interest in the premises;

(d) any source of funding documents including, but not limited to, loan documents, gifting statements, and finance institution statements;

(e) the premises floor plan, which for all license types includes accurate dimensions of the premises, the licensee or applicant's name, alcoholic beverage license number, physical address, and submission date, plus:

(i) for a retail license, illustrates all service areas, stationary drink preparation areas, storage areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;

(ii) for a distributor license, illustrates one or more permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;

(iii) for a winery, brewery, or distillery license, identifies all manufacturing areas, bonded areas, storage areas, and as applicable: sample room, drink preparation areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as otherwise provided in 16-3-311(8) and (9), MCA; or

(iv) for a colocated license, the respective manufacturing and retail areas are clearly marked with the floor plan criteria provided in (i) and (iii), as applicable, for both licenses.

(f) bank account authorization and signature documents;

(g) proof of assumed business name;

(h) proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes are current;

(i) two complete sets of fingerprints and a personal history statement for each person identified in 16-4-414, MCA, and ARM 42.12.212; ~~and~~

(j) for any entity applicant:

(i) ~~proof the business is registered in Montana~~ formation documents such as articles of organization, articles of incorporation, or registration/certificate of partnership. Foreign (non-Montana) entities are also required to provide proof of registration or certificate of authority issued by the Montana Secretary of State;

(ii) stock certificates or other unit ownership certificates that evidence underlying ownership of the entity;

(iii) stock ledger or ~~membership units~~ entity ownership register;

(iv) bylaws, operating agreement(s), partnership agreement(s), as applicable; and

(v) organizational meeting minutes, initial resolutions of shareholders, members, partners, as applicable~~.~~ ; and

(k) any other documents the department deems reasonably necessary to reach a final decision.

(4) At any time during the application process, an applicant must notify the department of any changes in the information and documents submitted under (3) and promptly provide the department with any corrected or updated information or documents. The department will toll the processing time of the applicant's license application in accordance with 16-4-402, MCA, until the corrected or updated documents are received.

(5) An applicant who does not have a premises ready to operate may apply for an available license pursuant to 16-4-417, MCA. The applicant must electronically apply for the license through the department's licensing portal and submit any applicable information under (3) for the department to review the application. A license issued without an approved premises will be automatically placed on nonuse status by the department.

(6) The department shall determine whether a complete application has been submitted. If a complete application has been submitted, the department shall arrange an investigation of the application and, if applicable, publish the notice of application for a license required by 16-4-207, MCA. If the department determines a complete application has not been submitted and processing cannot proceed, the department shall return the incomplete application to the applicant.

~~(6)~~ (7) Failure of a licensee to fulfill the requirements of 16-4-417, MCA, shall subject the license to revocation.

~~(7)~~ (8) The department may waive an application requirement set forth in this rule in its sole discretion.

~~(8)~~ (9) The disqualification of any applicant to hold the license disqualifies all.

~~(9)~~ (10) The department may issue a license in its sole discretion. A licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.101(3)(e) by relocating and revising pertinent text from the five suitability of premises rules - ARM 42.12.145(2)(m), 42.12.146(2)(l), 42.12.147(2)(m), 42.12.148(2), 42.12.149(2)(g), plus new colocated license premises requirements, to realign rule requirements because submission of a conforming floor plan is a license application, not a suitability of premises, issue. Amended (3)(e) also contains door, hallway, and stairway references for consistency with House Bill 705 (2021)

revisions to 16-3-311, MCA, which expanded allowances in suitability of premises for licensees operating in multi-tenant and/or private dwelling buildings.

The department proposes to amend (3)(j), to include the submission of relevant entity organizational and operating documents which is necessary for qualification of the entity for licensure, and add (3)(k) to include the general requirement that an applicant must provide any reasonably necessary documentation incidental to a license application so that the department may make its final determination. The requirement in proposed (3)(k) is provided in other department rules and its inclusion here promotes consistency across all of the alcoholic beverage rules.

The department proposes the addition of new (6) to provide license applicants with a more concise description of the licensing process than what is described in 16-4-402 and 16-4-404, MCA. New (6) is proposed as a response to feedback by license applicants who want a simplified explanation of Montana's alcoholic beverage licensing process.

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) "Adjacent to," with regard to alcoholic beverage advertising limitations for premises suitability, means:

(a) the premises share a common internal or external wall with the building at issue; or

(b) there is an absence of another building between the premises and the building at issue; and

(c) the distance between the nearest exterior wall of the premises and the building at issue is equal to or less than 100 feet.

(2) "Affiliation" means relationships wherein:

(a) an entity owns or controls another entity;

(b) entities are under common ownership or control; or

(c) an individual has decision-making authority or influence over business decisions for another entity.

(3) "Alteration" means a structural change or modification to the premises other than a cosmetic change. Examples include adding a patio/deck or removing a half wall.

(4) "Associated business" means a business that is not licensed by the state to keep or sell alcoholic beverages, but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "associated business." Examples of associated businesses are:

(a) a hotel that is not licensed to keep or sell alcoholic beverages, but leases space in the hotel to a licensee to sell alcoholic beverages; or

(b) a shopping mall that is not licensed to keep or sell alcoholic beverages, but leases space in the mall to a licensee to sell alcoholic beverages.

(5) "Bona fide sale" means a transaction that completely transfers the property to a qualified purchaser for consideration.

(6) "Building" means an enclosed structure with external walls and a roof that meets the requirements of 16-3-311, MCA. ~~Separate structures or structures~~ Buildings connected by skyways are not considered one building for licensing purposes.

(7) "Business directly related to the on-premises consumption of alcoholic beverages" means a business that is readily associated with on-site alcoholic beverage consumption, such as a hotel, bowling alley, casino, or restaurant. It does not include alcoholic beverage manufacturers, grocery stores, or off-premises alcoholic beverage businesses, except as allowed under 16-3-311, MCA.

(8) "Catered event" means a special event where the sale and service of alcoholic beverages is conducted by a licensee who has obtained a catering endorsement.

(9) "Catered event service area" means the area in which the licensee with a catering endorsement may sell and serve alcoholic beverages at retail.

(10) "Colocated license" means the same as the term defined in 16-4-401, MCA.

(11) "Colocated premises" means the same as the term defined in 16-4-401, MCA.

~~(10)~~ (12) "Complete application" means that the applicant has supplied all information and documentation requested on the license application forms or required by statute or rule and the necessary ~~supporting~~ information and documentation requested by the department to complete the application ~~has been supplied in compliance with the law~~.

~~(11)~~ (13) "Concession agreements" are agreements in which an on-premises consumption beer licensee or all-alcoholic beverages licensee provides the sale and service of alcoholic beverages for a non-licensed entity.

~~(12)~~ (14) "Contiguous" means touching or sharing a common border.

~~(13)~~ (15) "Cross collateralization" means collateral for one loan also serving as collateral for another loan.

~~(14)~~ (16) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.

~~(15)~~ (17) "Event barrier" means a barrier enclosing the perimeter of a catered event service area. The construction, installation, and use criteria of an event barrier is provided in ARM 42.12.128.

~~(16)~~ (18) "Fair" means a county, state, or regional fair that occurs no more than once per year, is held on a publicly owned fairgrounds, and is officially sanctioned by a government entity.

~~(17)~~ (19) "Family relationship" means a spouse, dependent children, or dependent parents.

~~(18)~~ (20) "Floor plan" means a diagram with measurements of the premises as seen from above.

~~(19)~~ (21) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.

~~(20)~~ (22) "Interior access" means entry that does not impede customer foot traffic from accessing any interior portion of the premises. Interior access is not found where a customer would be required to leave the interior portion of the premises.

~~(21)~~ (23) "Licensee" means a person, partnership, association, or other entity holding a Montana retail alcoholic beverage license, a retail alcoholic beverage

operation located on a U.S. military installation, an alcoholic beverage manufacturer, a table wine distributor, or a beer wholesaler within Montana.

~~(22)~~ (24) "License fee" means a fee paid at the time a new license application is submitted and upon renewal of an existing license.

~~(23)~~ (25) "Loan" means a written contract by which one delivers a sum of money to another with the agreement that the money be returned with interest within a specified period of time.

~~(24)~~ (26) "Manufacturing area" means the portion of a manufacturing premises that is not designated as a sample room, or operating a retail license under 16-4-401(9), MCA.

~~(25)~~ (27) "Noninstitutional lender" means a person other than a state or federally regulated banking or financial institution, a credit union, an investment company, a development company, or other regulated lender as defined in 31-1-111, MCA, who loans money to the applicant for a license or to the licensee.

~~(26)~~ (28) "Ownership interest" means the involvement in the business operated under the license by someone who owns some or all of the assets of the business, shares any portion of the profits, or any portion of the losses or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business and is entitled to the profits or suffers the losses. Ownership interest includes the right to control the location or ownership of a license. Examples of ownership interests would include the authority to participate in such business decisions as the sale of the license, relocation of the license, or change or creation of any financial arrangements for loan repayment or funding sources. Participation in business decisions does not include providing advice. A right of first refusal is not an ownership interest.

~~(27)~~ (29) "Parties" means a:

(a) licensee;

(b) applicant;

(c) secured party;

(d) protestor; or

(e) attorney representing the licensee, applicant, secured party, protestor, or other interested party.

~~(28)~~ (30) "Patio/Deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.

~~(29)~~ (31) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single ~~six-foot-wide~~ entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

(a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;

(b) have a portion of it be water;

(c) have additional entrances permitting public access to the patio/deck; and

(d) be less than three feet in height.

~~(30)~~ (32) "Permanent floor-to-ceiling wall" means a continuous structure spanning from floor to ceiling that remains in a fixed position and serves as a solid physical barrier. The wall may be constructed of brick, glass, stone, wood, and other materials as approved by the department. The wall may not be constructed of materials such as lattice or wrought iron that do not form a solid physical barrier.

~~(31)~~ (33) "Premises" means the area identified in the floor plan approved by the department on which the activities authorized under the license may be conducted.

~~(32)~~ (34) "Prepared serving" means the same as the term provided in 16-1-106, MCA.

~~(33)~~ (35) "Registered vendor representative" means the same as provided in ARM 42.11.105.

~~(34)~~ (36) "Retail alcoholic beverages license" means a license operated by an establishment for the retail sale of alcoholic beverage for either on- or off-premises consumption but does not include brewery, winery, or distillery licenses.

~~(35)~~ (37) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(36)~~ (38) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.

~~(37)~~ (39) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption.

~~(38)~~ (40) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

~~(39)~~ (41) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

(42) "Ski hill," for the purpose of administering 16-3-302(4), MCA, means the site and permanent structures that have been developed for alpine or Nordic skiing and other snow sports.

~~(40)~~ (43) "Special event," as it relates to special permits and catered events, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, fair, festival, reception, ~~seasonal event,~~ or sporting event for which there is an outcome, conclusion, or result.

~~(41)~~ (44) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

~~(42)~~ (45) "Storage area" means any portion of the premises that is accessible only by the licensee or its employees and where alcoholic beverages are stored in original packaging.

~~(43)~~ (46) "Substantially different use" means a change great enough to create a new type of business operation at a premises which is easily distinguishable from the business currently operated or previously planned to be operated at the same premises.

~~(44)~~ (47) "Temporary operating authority" means the authority granted to an applicant to operate a business pending final approval of the application.

~~(45)~~ (48) "Undisclosed ownership interest" means a person with an ownership interest in a license who is not identified as an applicant, shareholder, or member of an applicant on an application for the license, or as a licensee on the face of the license.

AUTH: 16-1-303, MCA
IMP: 16-1-106, 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.106 primarily to revise definitions based on the passage of HB 97, HB 305, and HB 539; or to provide additional clarity of existing terms based on department experiences or feedback from licensees.

The amendment to (6) is necessary for clarity because structures are not necessarily a "building," but may have the capacity for licensure in certain statutorily permitted circumstances created under HB 97 and HB 539. The department also desires to incorporate 16-3-311, MCA, into (6) and (7) which is necessary to support the definitions or statutory exceptions to the definitions.

The department proposes the definitions in proposed (10), (11), and (26) to support HB 305 since the colocated definitions were not codified in the general definitions statute at 16-1-106, MCA, and are new terminology for the industry.

The amendment to the definition in proposed (12) is necessary because a complete application includes the submission, review, and approval of information and documentation, which may be required in statute or rule, and the amendments seek to provide substantive and procedural clarity.

The department proposes to remove "seasonal event" from the definition of "special event" in proposed (40) because seasonal event does not provide measurable guidance or clarification for licensees or the department. The department is satisfied that the examples of picnic, fair, festival, reception, or sporting contest provide the necessary level of clarity.

The department also proposes to add the definition of "ski hill" in proposed (42) because HB 539 amended 16-3-302, MCA, to allow for the licensure of ski hills. The proposed definition is necessary to ensure the proposed area meets the intent of the law to license a bona fide ski hill.

42.12.109 PROTESTS (1) A protest letter as described in 16-4-207, MCA, must:

(a) contain statement(s) of the writer's intent that the letter be considered a protest;

(b) describe the reason for protesting the granting of a license; ~~and~~

(c) identify the appropriate action by:

(i) providing the license number and accurate trade name or applicant name in a case of a transfer; or

(ii) the trade name and applicant name and stating that it is for a new application for an original Montana all-alcoholic beverages license~~.~~; and

(d) be received by the department by the published protest letter deadline.

(2) A protest letter containing multiple signatures is considered one protest letter.

(3) If the grounds stated in the ~~letter of~~ protest letter contain public convenience and necessity issues, the prerequisite number of protest letters required to initiate a public convenience and necessity hearing, as defined in 16-4-207, MCA, must be received.

(4) Pursuant to 16-4-203, MCA, protests are limited to the operation of the alcoholic beverage license only.

~~(4)~~ (5) ~~Any~~ A protest letter which ~~failing~~ fails to meet the criteria in (1)~~, (2), and (3) by the protest deadline~~ through (4) will not be considered.

AUTH: 16-1-303, MCA
IMP: 16-4-203, 16-4-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.109 which is primarily necessary to implement Senate Bill 59 (2023) (SB 59) amendments to 16-4-203, MCA. SB 59 clarifies that valid license protests must be limited to the operation of the alcoholic beverage license only and that protests pertaining to gambling or other matters would not be considered by the department. The addition of new (4) implements this statutory change.

The department also proposes to amend (1) and proposed (5) through the reorganization and restatement of the requirement that a protest letter be received prior to the published deadline. Other changes to proposed (5) reflect grammatical improvements for improved clarity.

42.12.110 SERVICE OF NOTICES (1) A notice of proposed adverse action issued pursuant to 16-4-107, 16-4-406, 16-4-407, or 16-4-1008, MCA, shall be served upon the licensee or registrant of record or, in the case of an application for a new license, on the applicant, by sending a copy of the notice to the licensee, registrant, or applicant by ~~certified~~ U.S. mail to the mailing address on file with the department or by electronic means if the licensee, registrant, or applicant consents in writing.

(2) Service by mail shall be considered complete ~~three days after~~ upon mailing the notice. Service by electronic means shall be considered complete upon transmission but is not effective if the department learns that it did not reach the person to be served. Service shall not be considered incomplete because of refusal to accept delivery of the notice.

(3) The licensee, registrant, or applicant must respond to the department in writing within 20 days of service of the notice of proposed adverse action. Failure to respond will result in the enforcement of the administrative action proposed in the notice.

AUTH: 16-1-303, MCA
IMP: 2-4-601, 16-4-107, 16-4-406, 16-4-407, 16-4-1008, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.110(1) and (2) to incorporate more modern means of correspondence,

especially electronic delivery methods, conditioned upon the licensee, registrant, or applicant's consent. The department notes that certified mail costs have nearly tripled over the last 15 years and there are more economic and efficient ways of sending notices to licensees, registrants, and applicants. Further, the use of regular U.S. mail and electronic mail versus certified mail reflects how the department regularly corresponds with licensees, registrants, and applicants for business purposes. The proposed amendment to (2) is a similar service completion condition in other department rules and is a necessary addition when incomplete delivery is beyond any party's control.

42.12.111 APPLICATION FEES AND PROCESSING FEES FOR OTHER REQUESTS (1) The fees to be charged for processing applications or other requests and submissions are as follows:

(a) All-beverages license $400
(b) Beer importer's license $200
(c) ~~Beer~~ Combined beer wholesaler and table wine distributor license.....$200
(d) ~~Beer~~ Combined beer wholesaler and table wine distributor subwarehouse license $100
~~(e) Beer wholesaler license.....$200~~
~~(f)~~ (e) ~~Brewer's~~ Brewery license $200
(f) Out of state brewery or beer importers registration.....$200
(g) Brewery, winery, or distillery storage depot license $100
(h) Domestic distillery license $200
~~(i) Domestic distillery storage warehouse license .....$100~~
~~(j)~~ (i) Resort all-beverages license $400
~~(k)~~ (j) Restaurant beer and wine license $400
~~(l)~~ (k) Retail off-premises beer and table wine license $200
~~(m)~~ (l) Retail off-premises beer license $200
~~(n)~~ (m) Retail off-premises table wine license $200
~~(o)~~ (n) Retail on-premises beer and wine license ~~with wine amendment~~ ...$400
~~(p) Retail on-premises beer license .....$400~~
~~(q)~~ (o) Sacramental wine license $50
~~(r) Table wine distributor license .....$200~~
~~(s) Table wine distributor subwarehouse license .....$100~~
~~(t)~~ (p) Tour boat endorsement.....$100
~~(u)~~ (q) Winery license.....$200

(2) The fees to be charged for processing requests associated with an existing license are as follows:

(a) Adding a catering endorsement.....$100
~~(b) Adding a wine amendment.....$100~~
~~(c)~~ (b) Adding a concession agreement $100
~~(d)~~ (c) Adding an additional manufacturing location.....$100
~~(e)~~ (d) Adding or changing mortgages, secured interests, or liens.....$50
~~(f)~~ (e) Transferring ownership as a result of a foreclosure $200
~~(g)~~ (f) Transferring location $200
~~(h)~~ (g) Increasing current ownership interest from less than 10 percent to 10 percent or more..... .....$200

~~(i)~~ (h) Changing the business entity type.....$200
~~(j)~~ (i) Changing the alcohol beverage type $200
~~(k)~~ (j) Adding a delivery endorsement $100
(k) Adding an additional golf course building……..$100

(3) The processing fee for determination of resort area is $500.

(4) Processing fees are not refundable.

(5) A fingerprint processing fee, in the amount indicated on the application form, must accompany each application.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-1-302, 16-1-303, 16-3-302, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-414, 16-4-420, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.111 based on the passage of several pieces of legislation during the 68th Montana Legislature as follows:

- House Bill 127 (HB 127) eliminated the individual beer wholesaler and table wine distributor licenses and created a combined beer wholesaler and table wine distributor license. The department proposes to amend (1)(c) and (d) to reflect the license combination and strike (1)(r) and (s) which applied to wine distributors. HB 127 is effective July 1, 2024.
- House Bill 48 (HB 48) created two new license types: a winery storage depot license and a distillery storage depot license, which are like brewery storage depot licenses. The department proposes to amend (1)(g) and strike (1)(i) which will consolidate the common depot license types and proposes a processing fee of $100 for consistency with the other storage depot licenses.
- House Bill 68 (HB 68) removed the option to add a wine amendment to a retail on-premises consumption beer license. The ability to sell wine is inclusive with the license and is now referred to as an on-premises consumption retail beer and wine license. To effectuate this license change, the department proposes to amend proposed (1)(n) and strike current (2)(b). HB 68 is effective July 1, 2024.
- House Bill 75 requires that out-of-state breweries and beer importers register with the department instead of obtaining a license. The department's proposal in (1)(f) is necessary to effectuate this change.
- As described above for NEW RULE I, HB 97 allows golf course beer and wine licensees and all-beverage licensees that use the license at a golf course the ability to sell and serve alcoholic beverages from additional buildings or structures on the golf course if approved by the department and a fee has been paid. The department proposes a one-time fee of $100 per additional golf course building in new (2)(k), which is consistent with other alcoholic beverage processing fees.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact through the payment and collection of fees proposed in ARM 42.12.111 and the number of persons affected.

For combined beer wholesaler and table wine distributor licenses, there is no fee-oriented fiscal impact associated with changing the rule to reflect this statutory license change. Similarly, the change in SB 75 to adopt registrations instead of licenses will not have an anticipated fiscal impact on the 125 out-of-state breweries and beer importers.

For brewery, winery, or distillery storage depot licenses, the department estimates that 13 distilleries and wineries would apply for this license at an aggregate license fee increase to the general fund of $5,200 per year. The department estimates that the total number of distilleries and wineries affected is 59.

The department estimates that the fiscal impact for the license fee increase to implement HB 68 would increase general fund revenue by about $9,000 each year starting in FY 2025 (July 1, 2024) as there are approximately 34 on-premises consumption beer licensees who do not have the wine amendment compared to 467 licensees who do have the amendment.

The department anticipates that approximately 30 of the 55 licensed Montana golf courses would pursue an additional golf course building to extend service of alcoholic beverages. Accordingly, the department estimates the fiscal impact of the fee in proposed (2)(k) to be $100 per licensee multiplied by 30 applications totaling a $3,000 one-time increase to the general fund.

42.12.118 ABBREVIATED APPLICATION FOR LICENSE MODIFICATION

(1) An abbreviated application may be used to modify a license as set forth in (2) and (3). The application process in ARM 42.12.101 shall be followed in all other cases.

(2) ~~Licensees~~ A licensee must submit an abbreviated application within 90 days of:

(a) removing an existing, previously qualified owner, member, partner, or shareholder from the license without the exchange of funds;

(b) adding an individual or entity as a less than 15 percent owner;

(c) adding or removing officers and/or directors of the licensee to comply with the requirements of 16-4-401(2)(b)(i), (2)(c)(i), (2)(h)(i), or (2)(i)(i), MCA, as applicable; or

~~(c)~~ (d) changing the entity type of the licensee if the existing owners and ownership percentages do not change.

(3) ~~Licensees~~ A licensee must submit an abbreviated application prior to:

~~(a) changing the ownership interest between two or more qualified owners, members, partners, or shareholders;~~

~~(b)~~ (a) transferring the location of the license;

~~(c)~~ (b) increasing the current ownership interest of any owner, member, partner, or shareholder from less than 15 percent to 15 percent or more;

~~(d)~~ (c) changing the entity type of the business if the existing owners or ownership percentages also change; or

~~(e)~~ (d) changing the license type.

(4) A licensee's failure to timely submit an abbreviated application shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA
IMP: 16-4-401, 16-4-402, 16-4-414, 16-4-415, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.118 to implement HB 155 amendments to 16-4-415, MCA. HB 155 allows an ownership interest in an alcoholic beverage license to be transferred to an existing owner with 15 percent or more ownership without department approval, subject to reporting requirements at the time of license renewal. Based on HB 155, the department proposes to strike (3)(a) which is now obsolete, and renumber the remaining subsections.

The department also proposes minor grammatical amendments in (2) and (3) for improved consistency in the rule and with similar references in other rules.

42.12.128 CATERING ENDORSEMENT; CATERED EVENTS; EVENT BARRIERS (1) Any licensee having obtained a catering endorsement under the provisions of 16-4-111 or 16-4-204, MCA, is authorized to sell alcoholic beverages authorized under the license to persons attending a catered event sponsored by someone other than the licensee or the concessionaire of the licensee and at a location not otherwise licensed or operating under a special permit.

(2) Prior to selling or serving alcoholic beverages at the catered event, the licensee shall:

(a) have an executed written agreement with the event's sponsor;

(b) notify the local law enforcement agency that has jurisdiction over the area where the catered event will be held using a form provided by the department;

(c) pay the local law enforcement agency a $35 fee, if required by the local government, as provided in 16-4-111 and 16-4-204, MCA; and

(d) ensure compliance with the alcoholic beverages sales restrictions provided in 16-3-306, MCA.

(3) A catered event may have more than one licensee cater the event. Licensees shall prevent the consumption of alcoholic beverages within their catered event service area that they did not sell or provide.

(4) A catered event may last for a maximum of three days, except a licensee may have one catered event per year that lasts up to seven days for a fair, as defined in ARM 42.12.106. The storage of alcoholic beverages may occur at the catered event, ~~one day prior to the catered event until one day following the conclusion of the catered event if the alcoholic beverages are in a secured location that prevents access by anyone other than the licensee or licensee's employees~~ as provided in 16-4-111 and 16-4-204, MCA.

(5) Alcoholic beverages may be sold and served at the catered event from a booth, stand, or other fixed place of business as designated and described in the notice given to the local law enforcement agency and may include grandstands or bleachers, as provided for in 16-4-111 and 16-4-204, MCA.

(6) If there is not an existing boundary defining the catered event service area, an event barrier shall be required to clearly mark where the sale and service of each licensee's alcoholic beverages is allowed. The event barrier:

(a) shall be constructed in a manner that directs or impedes ordinary foot traffic and clearly defines the boundary of the catered event service area;

(b) shall be at least three feet in height at all points;

(c) shall have a clearly defined entrance permitting access to the catered event service area;

(d) may be shared with an adjoining licensee to define their respective catered event service areas; and

(e) may have a portion consisting of an existing natural or artificial barrier.

(7) When a licensee caters an event that is within 15 feet of its licensed premises, patrons may take alcoholic beverages between the licensed premises and the area authorized for the catered event if the licensee:

(a) incorporates into the event barrier, a clearly marked path or paths from the public entry of the licensed premises to the public entry of the catered event;

(b) posts signs along the path or paths informing patrons as to where the consumption of alcoholic beverages is allowed and not allowed; and

(c) obtains approval from local government officials for the use of the path or paths, if:

(i) the licensee does not already have possessory interest for the area;

(ii) the licensee does not already have conditional use approval from local government officials for the area; or

(iii) there is an ordinance in place prohibiting open containers of alcoholic beverages.

(8) The sale and service of alcoholic beverages at the catered event may be conducted by:

(a) the licensee or licensee's employees;

(b) volunteers of the licensee; or

(c) the alcoholic beverage manufacturer or vendor, its employees, or registered vendor representatives if:

(i) the licensee gives their explicit consent;

(ii) the alcoholic beverage manufacturer or vendor holds a current alcoholic beverage license, registration, or permit from the department; and

(iii) each person listed in (c) serving alcoholic beverages is current with the Responsible Alcohol Sales and Service Act, provided in 16-4-1005, MCA, prior to the commencement of the catered event.

(9) On or before the 15th day of each month, the licensee shall electronically report, on a form provided by the department, those events the licensee catered in the previous month and shall include a copy of the notification form signed by local law enforcement.

(10) A copy of the executed written agreement between the licensee and event sponsor for each event catered shall be maintained by the licensee for a period of three years from the date of the event. The department may make an examination of any such agreement at any time.

(11) The licensee who catered the event is ultimately responsible for ensuring compliance with all alcoholic beverage laws and regulations, violations of which may subject the licensee to administrative action.

(12) A distillery licensed under 16-4-312, MCA, may sponsor a catered event with an all-beverages licensee with a catering endorsement if:

(a) the distillery obtains department approval by submitting a form provided by the department at least 30 days prior to the start of the catered event;

(b) the all-beverages licensee follows the catering requirements provided in statute and this rule;

(c) all liquor provided for on-premises consumption at the catered event is purchased by the all-beverages licensee from an agency liquor store;

(d) all liquor sold for off-premises consumption at the catered event is purchased by the all-beverages licensee from an agency liquor store; and

(e) the distillery is prohibited from selling liquor directly to catered event attendees.

(13) In accordance with 16-4-204, MCA, the department may approve only six catered events per calendar year, industry-wide. As such, catered event requests from distilleries will be processed and approved on a first-come, first-served basis.

AUTH: 16-1-303, 16-4-204, MCA
IMP: 16-3-103, 16-4-111, 16-4-204, 16-4-312, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.128 to implement HB 164 and HB 578. HB 164 revised catering laws by removing any food requirements for on-premises consumption beer licensees, prohibiting concessionaires from sponsoring catered events, clarifying distance requirements where catered events may occur, making the local law enforcement fee at the discretion of the local government, and allowing the storage of alcoholic beverages at a catered event. HB 578 allows for distillery-sponsored catered events with an industry-wide limit of six events per year.

Amendments to (1), (2), and (4) are necessary to reflect statutory changes under HB 164.

Adopting proposed (12) implements necessary notice and approval processes provided in HB 578 for distillery-sponsored catered events and clarifies how product must be obtained for a catered event. Proposed (13) reflects HB 578's catered event limit for the distillery industry and provides necessary procedural guidance for department processing and approval of catered event requests.

42.12.131 APPLICATIONS FOR LICENSES AVAILABLE IN QUOTA AREAS, AND APPLICATION PROCESSING TIMES (1) When the department is not required to conduct a competitive bidding process for an available license in a quota area, applications will be processed on a first-come, first-served basis.

~~(2) The number of restaurant beer and wine licenses with a seating capacity of 101 persons or more may not exceed 25 percent of the number of restaurant beer and wine licenses allowed in the quota area.~~

~~(3)~~ (2) As set forth in 16-4-420, MCA, the department must ~~make a decision either~~ grant~~ing~~ or deny~~ing~~ a completed restaurant beer and wine license application within four months of receipt of the application. However, if the department's investigation into the application uncovers the necessity to analyze additional information not previously provided by the applicant, the four-month time period stops until the information is provided.

AUTH: 16-1-303, 16-4-105, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASONABLE NECESSITY: The 68th Montana Legislature enacted House Bill 72 which made substantial revisions to 16-4-420, MCA, relating to the requirements for restaurant beer and wine licenses. The department proposes to amend ARM 42.12.131 by striking current (2) because the statutory amendments include this language making it unnecessary to repeat in rule.

The department also proposes to amend current (3) through grammar edits to improve clarity and renumber the section to (2).

42.12.132 LOCATION MANAGER (1) All on-premises retailers, off-premises retailers, manufacturers, and distributors shall designate at least one location manager, which may be a person or an entity providing location management services, to oversee the alcoholic beverage operations and ensure compliance with alcoholic beverage laws and regulations on behalf of the licensee.

(a) A location manager designation is based upon the duties performed rather than job title and a location manager must meet the qualifications criteria provided in 16-4-419, MCA, and this rule.

(b) If more than one person performs location manager duties, the licensee shall seek the department's approval for each manager.

(2) The licensee shall initially seek the department's approval of all location managers and any business entity providing location management services on the license application.

(3) Following initial licensure, the licensee shall seek the department's approval of a location manager as follows:

(a) if the location manager is not an owner vetted pursuant to 16-4-401, MCA, ~~within 30 days of the employee commencing location manager duties,~~ then the licensee shall submit the location manager application, the employee's personal history statement, two complete sets of the employee's fingerprint cards, and the fingerprint processing fee within 30 days of the employee commencing location manager duties; or

(b) if the location manager is an owner vetted pursuant to 16-4-401, MCA, ~~on or before the deadline to renew the license in the year the owner commences location manager duties,~~ then the licensee ~~shall submit the location manager application~~ must complete and submit the location manager application but does not need to resubmit the owner's personal history statement, two complete sets of the owner's fingerprint cards, or the fingerprint processing fee.

(4) If a licensee designates a business entity as a location manager, the business entity must appoint at least one person who meets the requirements of 16-

4-419, MCA, and this rule as a location manager. The licensee shall submit the representative's location manager application, personal history statement, two complete sets of fingerprint cards, and fingerprint processing fee within 30 days of the commencement of location manager duties.

~~(2)~~ (5) ~~The~~ A licensee shall also confirm annually, on the license renewal form, who is performing location manager duties whether under (3) or (4). ~~At this time, t~~ The licensee shall also identify any location managers who ceased performing managerial duties during the past license year.

~~(3) A location manager is an employee who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. The location manager designation is based upon the duties performed rather than the job title assigned.~~

~~(4) A location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen must demonstrate that the employee is likely to operate the establishment in compliance with all applicable laws of the state and local governments.~~

~~(5)~~ (6) The department shall issue its determination of the location manager application within 15 days of receiving the results of the ~~background~~ investigation unless the department receives investigative findings that require additional consideration. In this case, the department will notify the licensee, in writing, within five days that an extension of the determination is necessary.

~~(6)~~ (7) The licensee shall:

(a) retain ultimate control over the license and premises;

(b) maintain an active participation in the alcoholic beverage operation sufficient to ensure the proper and lawful conduct of the business; and

(c) except for an owner acting as a location manager, provide the location manager compensation commensurate with the duties performed. Compensation shall not be based on a percentage of gross sales or net profits.

~~(7)~~ (8) Failure to abide by the provisions of this rule, including the failure to disclose the person performing location manager duties, may subject the licensee to administrative action, including revocation of the license.

AUTH: 16-1-303, 16-4-419, MCA
IMP: 16-1-302, 16-4-414, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.132 which is primarily necessary to implement statutory changes enacted under Senate Bill 21 (2023) (SB 21). SB 21, codified as 16-4-419, MCA, provides statutory requirements for alcoholic beverage license location managers which previously existed in administrative rule, and also authorizes business entities that perform location manager services for a licensee. The department also proposes the revision, removal, and/or reorganization of rule content which is now redundant to 16-4-419, MCA, or reflects improvements for internal continuity.

The department's proposed amendments to (1) and (1)(a) reflect the transfer and revision of content from current (3) and the entity management option in 16-4-419(3), MCA. Proposed (1)(b) through (3) are a necessary reorganization of rule content with proposed removal of text for brevity or improved descriptions of

department business practices. Section (3)(b) proposes to remove an administrative burden on licensees for qualified owners who function as a location manager for the licensee.

The addition of proposed (4) implements 16-4-419, MCA, and provides consistent notice and application approval procedures for business entities/management companies engaged by a licensee as a location manager.

Proposed (5) reflects amendments to improve internal consistency and clarify that at no less often than license renewal, a licensee shall confirm its location manager.

Current (4) is proposed for removal because the same requirement is found in 16-4-419, MCA, and remaining sections are renumbered.

Amendments to proposed (6) clarify processing deadlines for location manager approval because department approval of a location manager is not limited to receipt of a favorable background check and may take additional time if document review or audit concerns are raised. If additional investigative time is warranted, the department proposes to timely notify the licensee.

Finally, the department proposes to add 16-4-419, MCA, as an implementing citation, which is required by 2-4-305, MCA.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1) For purposes of this rule, any ownership interest in a business that operates a license issued under the Montana Alcoholic Beverage Code is considered to be an ownership interest in the license itself.

(2) A Montana all-beverages licensee may not:

(a) possess a financial or ownership interest in:

(i) a Montana agency liquor store;

(ii) possess an ownership interest in more than ~~two additional Montana all-beverages licenses, for an aggregate number of three licenses, except as provided~~ the limit for Montana all-beverages licenses established in 16-4-205, MCA; or

(iii) more than half the total number of Montana all-beverages licenses in any quota area described in 16-4-201, MCA;

(b) through a business or family relationship, share in the profits or liabilities in more than half the total number of Montana all-beverages licenses in the specific quota area in which the licenses will be held; or

(c) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except ~~that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses~~ as provided in 16-4-401, MCA; or

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler and~~, Montana~~ table wine distributor~~,~~ and a Montana agency liquor store.

(3) All other Montana retail on-premises consumption alcoholic beverages licensees may not:

(a) possess a financial or ownership interest in a Montana agency liquor store; or

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except ~~that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses~~ as provided in 16-4-401, MCA; or

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler and~~, Montana~~ table wine distributor~~,~~ and a Montana agency liquor store.

(4) A Montana retail off-premises consumption beer and table wine licensee may not:

(a) possess a financial or ownership interest in a Montana agency liquor store; or

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages; or

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler and~~, Montana~~ table wine distributor~~,~~ and a Montana agency liquor store.

(5) A Montana combined beer wholesaler and table wine distributor may not:

(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana combined beer wholesaler and table wine distributor;

(b) have any affiliation with a Montana alcoholic beverages retailer, or the immediate family of a Montana alcoholic beverages retailer; or

(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.

~~(6) A Montana table wine distributor may not:~~

~~(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana table wine distributor;~~

~~(b) have any affiliation with a Montana alcoholic beverages retailer or the immediate family member of a Montana alcoholic beverages retailer; or~~

~~(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.~~

~~(7)~~ (6) A Montana alcoholic beverage manufacturer may not possess a financial or ownership interest in:

(a) a distributor of alcoholic beverages, including a Montana beer wholesaler, a Montana table wine distributor, and a Montana agency liquor store; or

(b) a Montana alcoholic beverages retailer, except as provided in 16-4-401, MCA.

(7) When a licensed retailer and a licensed manufacturer operate a colocated license, the following restrictions apply in addition to those in (1) through (6):

(a) a person with an ownership interest in a licensed brewery or licensed winery may hold complete ownership of up to a combined total of three on-premises consumption beer and wine licenses or all-beverage licenses;

(b) a person with an ownership interest in a licensed distillery may hold complete ownership of up to three all-beverage licenses;

(c) a person with an ownership interest in an all-beverage license and a Montana distillery license may hold complete ownership interest in up to two additional all-beverage licenses; and

(d) a person with an ownership interest in an on-premises consumption beer and wine license or all-beverage license and a Montana brewery license or Montana winery license may hold complete ownership interest in up to two additional on-premises consumption beer and wine licenses or all-beverages licenses.

AUTH: 16-1-303, MCA
IMP: 16-4-201, 16-4-205, 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.143(2), (3), (4), (5), and strike (6) which is necessary to implement HB 127. HB 127 eliminates the individual beer wholesaler and table wine distributor licenses and creates a combined beer wholesaler and table wine distributor license, so all internal references require amendment.

The department also proposes to amend (2) to implement House Bill 242 (2023)(HB 242). HB 242 amended 16-4-205, MCA, to increase the number of all-beverage licenses in which a person may have ownership interest from three to seven. The section will now cross reference the statute for attribution and to alleviate any future rulemaking on the number of licenses allowed for ownership.

The department last proposes to amend (2)(c)(i), (3)(b)(i), proposed (6), and to add proposed (7), to implement HB 305 which as previously described allows certain retail licensees to have complete ownership in a manufacturing license. The permissible cross-tier ownerships have been codified at 16-4-401(9), MCA, and proposed (7) is a more accessible and necessary reiteration of license interplay.

42.12.145 ON-PREMISES CONSUMPTION BEER AND WINE AND ALL-BEVERAGE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an on-premises consumption beer and wine or all-beverage retailer proposes to operate a license, when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, changes the location where a license will be operated, makes alterations to a premises with a floor plan that the department approved, or applies to operate under a concession agreement with a concessionaire, as provided in ARM 42.12.133. The requirements of this rule also apply to an on-premises consumption beer and wine or all-beverage retailer operating at a colocated premises.

(2) The premises of an on-premises consumption beer and wine or all-beverage retailer may be considered suitable only if:

(a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) except as allowed in 16-4-401, MCA, a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The premises may also include the buildings and structures allowed in 16-3-302, MCA, and [NEW RULE I]. The interior portion of the premises

must comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(1)(a), (8), ~~and~~ (9), and (10), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. Except as otherwise provided in 16-3-311(8), ~~and~~ (9), and (10), MCA, the only access from the premises to another business may be through ~~a single~~ lockable doors~~, no more than six feet wide,~~ in the permanent floor-to-ceiling wall~~. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval~~;

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access, except as provided in 16-6-103, MCA;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises are either solely dedicated to the on-premises consumption of alcoholic beverages or are within a business directly related to the on-premises consumption of alcoholic beverages;

(j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(k) alcoholic beverages are advertised and displayed as being available for purchase;

(l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA, or advertisements excepted in 16-3-244, MCA;

~~(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all service areas, stationary drink preparation areas, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;~~

~~(n)~~ (m) the interior premises include at least one stationary drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck and moveable drink preparation areas, subject to department approval;

~~(o)~~ (n) there is interior access to any interior portion of the premises;

~~(p)~~ (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(1)(b) and (6) ~~and 16-4-213, MCA~~;

~~(q)~~ (p) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and

~~(r)~~ (q) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) ~~The premises may have a patio/deck.~~ A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:

(a) building, health, and fire code approval is obtained, as required by state or local law;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) with the exception of a patio/deck at a golf course, a perimeter barrier or existing natural boundary clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate physical safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

~~(4)~~ (5) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

~~(5)~~ (6) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA
IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-213, 16-4-402, 16-4-405, 16-4-418, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.145 which is necessary to implement statutory changes to 16-3-311, MCA, under HB 68 and HB 539. Since HB 68 removed the optional wine amendment to a retail on-premises consumption beer license the department proposes to amend the catchphrase of the rule and the internal references in (1) and (2).

The department proposes to amend (2)(a) to align with 16-3-311, MCA, as amended, which allows a licensee to lease or sublease the kitchen or another specified area within its premises to another business entity if certain conditions are met.

The department proposes to amend (2)(c) based on colocated licenses, which are referenced in 16-4-401, MCA, and reflects the department's proposal in NEW RULE II.

The department proposes to amend (2)(e) to reflect other aspects of HB 539's amendments to 16-3-302 and 16-3-311, MCA, and HB 98's amendments to 16-3-311, MCA, which allow public airports to use the entire airport terminal as the licensed premises regardless of other businesses or uses in the terminal.

The department proposes to amend (2)(l) by striking the second sentence in its entirety which is necessary to implement House Bill 160 (2023)(HB 160). HB 160 removed a long-standing statutory restriction that beer advertising could not be applied to the exterior of a building adjacent to that of a retail licensee so that provision is now obsolete.

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(m) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

The department proposes to amend (2)(p) to implement other HB 539 amendments to 16-3-311, MCA, which permit keg storage and beer lines to be in a noncontiguous storage area of a licensee.

The department also proposes (4) to implement other HB 539 changes to 16-3-311, MCA, which allows additional businesses to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (4) continues a necessary premises requirement in statute and administrative rule that a licensee must have sufficient physical safeguards to prevent access to a licensee's alcoholic beverage inventory since another business entity will be operating within the same space.

42.12.146 RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where a restaurant beer and wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a restaurant beer and wine retailer may be considered suitable only if:

(a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(8) and (9), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. Except as provided in 16-3-311(1)(a), (8),

and (9), MCA, the only access from the premises to another business may be through ~~a single~~ lockable doors~~, no more than six feet wide,~~ in the permanent floor-to-ceiling wall~~. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval~~;

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(j) alcoholic beverages are advertised and displayed as being available for purchase;

(k) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

~~(l) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all service areas, service bars, dining room, kitchen, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;~~

~~(m)~~ (l) there is seating for patrons totaling not more than the seating capacity for which the premises are licensed;

~~(n)~~ (m) there is an interior service bar. The premises may have more than one service bar, including service bars on the patio/deck, subject to department approval;

~~(o)~~ (n) there is interior access to any interior portion of the premises;

~~(p)~~ (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(6), MCA;

~~(q)~~ (p) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any service bar; and

~~(r)~~ (q) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) ~~The premises may have a patio/deck.~~ A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

(5) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements of 16-4-420, MCA.

~~(4)~~ (6) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

~~(5)~~ (7) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA
IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-402, 16-4-405, 16-4-421, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.146(2)(a), (2)(e), and (2)(p) to implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539 and are referenced in the department's statement of reasonable necessity for the amendment to ARM 42.12.145.

The department proposes to amend (2)(k) in the same manner and for the same reasons as proposed for ARM 42.12.145(2)(l) (necessary to implement statutory changes to 16-3-311, MCA, made under HB 160). As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(l) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises. The amended (3)(e) also contains doors, hallways, and stairways references for consistency with House Bill 705 (2021) revisions to 16-3-311, MCA, which expanded allowances in suitability of premises for licensees operating in multi-tenant and/or private dwelling buildings.

The department also proposes amendments to (4) in the same manner and for the same reasons as proposed ARM 42.12.145(4) (necessary to implement other HB 539 changes to 16-3-311, MCA, allowing additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system). As with proposed ARM 42.12.145(4), proposed (4) in this rule continues a necessary premises requirement in statute and administrative rule that a licensee must have sufficient physical safeguards to prevent access to a

licensee's alcoholic beverage inventory since another business entity will be operating within the same space.

The department proposes the addition of proposed (5) because 16-3-311, MCA, as amended, did not override a restaurant beer and wine licensee's specific requirements provided in 16-4-420, MCA, and the rule section is a necessary reinforcement of the law for this license type.

42.12.147 OFF-PREMISES BEER AND TABLE WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an off-premises beer and table wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of an off-premises beer and table wine retailer may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business. The only access from the premises to another licensed alcoholic beverage business may be through ~~a single~~ lockable door~~s, no more than six feet wide,~~ in the permanent floor-to-ceiling wall~~. Additional lockable doors or a doorway larger than six feet wide in the permanent floor-to-ceiling wall may be allowed only upon department approval~~;

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises are in a stand-alone beer and/or table wine business, a grocery store, or a drugstore licensed as a pharmacy;

(j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(k) alcoholic beverages are advertised and displayed as being available for purchase;

(l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

~~(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, identifies any storage areas, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;~~

~~(n)~~ (m) there is interior access to any interior portion of the premises; and

~~(o)~~ (n) all storage areas are located in the interior portion of the premises, except as authorized in 16-3-311(6), MCA.

(3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(4) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA
IMP: 16-3-244, 16-3-309, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.147(2)(e), (2)(l), and (2)(p) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 and 42.12.146 (implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539).

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(m) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

The department's proposed amendment in proposed (2)(n) updates a statutory cross-reference.

42.12.148 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises ~~of the principal place of business and~~ including any subwarehouse where a beer wholesaler and table wine distributor proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a beer wholesaler and table wine distributor may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) building, health, and fire code approval is obtained;

(f) the premises are located in one building or a specific portion of one building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business. The only access from the premises to another licensed alcoholic beverage business may be through ~~a single~~ lockable door~~s, no more than six feet wide,~~ in the permanent floor-to-ceiling wall~~. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval~~;

~~(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any permanent floor-to-ceiling wall required between the premises and another licensed alcoholic beverage business;~~

~~(h)~~ (g) the premises include sufficient space for the storage and distribution of beer and/or table wine in large quantities;

~~(i)~~ (h) there is interior access to any interior portion of the premises; and

~~(j)~~ (i) all storage areas are located in the interior portion of the premises.

(3) The premises may include more than one building for storage and distribution purposes only if the property on which the buildings are located is contiguous and the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department. All buildings on the premises are subject to suitability requirements in (2).

(4) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(5) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA
IMP: 16-4-103, 16-4-108, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes to amend 42.12.148(1) to implement statutory changes throughout Title 16, chapter 4, MCA, made under House Bill 155 (2023). HB 155 generally revised terminology including references to the location of wholesaler or table wine distributor's business as a premises and not principal place of business. Additionally, since a subwarehouse

operates under a different license, there is no need for a specific reference in rule. Any premises a wholesaler or table wine distributor intends to use must meet the suitability requirements provided in this rule.

The department proposes to amend ARM 42.12.148(2)(f) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 through 42.12.147 (to implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539).

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(g) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an alcoholic beverage manufacturer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved. The requirements of this rule also apply to an alcoholic beverage manufacturer operating at a colocated premises.

(2) The premises of a manufacturer may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated on the premises, except as authorized under an approved alternating proprietor arrangement;

(d) the premises are identified by a unique address;

(e) building, health, and fire code approval is obtained;

(f) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA. The only access from the premises to another licensed alcoholic beverage business may be through ~~a single~~ lockable door~~s, no more than six feet wide,~~ in the permanent floor-to-ceiling wall, except as provided in 16-3-311(8) and (9), MCA~~. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval~~;

~~(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all manufacturing areas, storage areas, sample room, drink preparation areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA;~~

~~(h)~~ (g) there is interior access to any interior portion of the premises;

~~(i)~~ (h) all storage areas are located in the interior portion of the premises;

~~(j)~~ (i) access by unauthorized persons to manufacturing areas is restricted; and

~~(k)~~ (j) it is readily determinable that a manufacturer operates at the premises due to outdoor signage and the existence of the equipment necessary to undertake the activities for which the premises are licensed.

(3) The premises may include more than one building for manufacturing purposes only if ~~the property on which the buildings are located is contiguous and~~ the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate any additional building under the manufacturer's existing federal permit or notice. All buildings on the premises are subject to the suitability requirements in (2).

(4) A domestic brewery, winery, or distillery may operate a warehouse ~~on property that is not contiguous to property on which the manufacturing premises are located~~ anywhere in the state only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification, if applicable, that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate storage depot license. All warehouses are subject to the suitability requirements in (2) ~~and must be equipped with refrigeration and cooling apparatus~~.

~~(5) A domestic distillery may operate a warehouse on property that is not contiguous to property on which the manufacturing premises are located only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate domestic distillery storage warehouse license. All warehouses are subject to the suitability requirements in (2).~~

~~(6)~~ (5) In addition to all other requirements, a manufacturer's premises with a sample room shall be considered suitable only if:

(a) there is a single contiguous sample room;

(b) the sample room is located in the interior portion of the premises;

(c) the sample room is not located in a storage warehouse;

(d) the sample room contains a drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck, subject to department approval;

(e) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and

(f) self-service devices and vending machines are not used to serve alcoholic beverages.

~~(7)~~ (6) A manufacturing premises with a sample room may have a patio/deck. The patio/deck will be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) the patio/deck is contiguous with and immediately accessible from the sample room, except where the department approves a path connecting the sample room and the patio/deck. The use of a path may only be approved if the licensee holds possessory interest in the path, the path is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages;

(c) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages is allowed; and

(d) the physical layout and equipment prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages.

(7) A premises may only include one sample room, regardless of the number of manufacturing buildings the licensee operates.

(8) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(9) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA
IMP: 16-3-311, 16-3-411, 16-4-102, 16-4-312, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.149 which is necessary to implement statutory changes enacted under House Bill 48 (2023) (HB 48), HB 539, and House Bill 579 (2023) (HB 579).

The department proposes to amend (2)(f) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 through 42.12.148 (necessary to implement HB 539 changes to 16-3-311, MCA, allowing additional business to operate within a licensed premises without floor-to-ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system). As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(g) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

Amendment to (3) is proposed to reflect HB 579 changes to 16-4-312, MCA, which now allows a distillery to operate additional manufacturing buildings under the same license if allowed under the same federal basic permit. HB 579 also clarified

in 16-4-312, MCA, the sample room limit a licensee may operate, so the department believes proposed (7) is a necessary reiteration of the new statutory restriction.

HB 48 created two new license types: a winery storage depot license and a distillery storage depot license. Amending (4) is necessary to notify licensees of the suitability requirements that must be met for the storage depot to be approved by the department and the requisite federal requirement for a premises to be approved by the Alcohol and Tobacco Tax and Trade Bureau. HB 48 also removed the requirement that a brewery storage depot must be equipped with refrigeration and cooling apparatuses so (4) is also amended for continuity with statute. Lastly, because (4) proposes to incorporate language for distillery storage depots, (5) is no longer necessary and the department proposes its removal.

42.12.150 ALCOHOLIC BEVERAGE INDUSTRY TRADE SHOWS ~~(1) An all-beverage licensee or on-premises consumption beer licensee may host an industry trade show at the licensee's licensed premises or may cater an industry trade show pursuant to ARM 42.12.128. Alcoholic beverages provided at an industry trade show are limited by the hosting or catering licensee's type of license.~~

~~(2)~~ (1) For the purpose of this rule, an alcoholic beverage industry trade show means an event sponsored by the department, another state agency of Montana, or a nonprofit association representing an alcoholic beverage industry association~~, and~~ where alcoholic beverage~~s are provided to attendees for promotional purposes~~ manufacturers showcase their products to industry trade show attendees. ~~An industry trade show shall not be open to the public. A nonprofit association may not sponsor more than two industry trade shows per year.~~

(2) Alcoholic beverage industry trade shows may only be held if prior approval is obtained from the department. A trade show sponsor must electronically submit an industry trade show application to the department at least 30 days prior to the alcoholic beverage industry trade show.

(3) ~~All a~~Attendees of an alcoholic beverage industry trade show ~~must be admitted~~ are limited to the following persons invited by the event sponsor: ~~and must be a~~ licensees, ~~a~~ persons employed in the alcoholic beverage industry or a related industry, or ~~are a~~ family members ~~or partner~~ of such persons, and ~~may~~ include public officers, candidates for public office, and public employees involved in the alcoholic beverage industry, or related industry. A related industry includes but is not limited to gambling, food preparation, and other professional services provided to alcoholic beverages licensees.

~~(4) A vendor, as defined in ARM 42.11.105, with a current vendor permit, as provided in ARM 42.11.213, may request a trade show case from the department for use at an industry trade show. A trade show case means a case of product used by a registered vendor representative for promoting a vendor's products to attendees of an industry trade show. A product that has not been approved by the department may not be included in a trade show case. For the purposes of this rule, product means a liquor item identified by a unique identification number or stock-keeping unit.~~

~~(a) Except as provided in 16-4-311, MCA, the vendor must ship the trade show case to the state liquor warehouse at no charge to the department.~~

~~(b) In order for an industry trade show case to be removed from bailment at~~

~~the state liquor warehouse, a vendor must submit a request electronically on a form provided by the department at least seven days prior to the requested ship date to the agency liquor store.~~

~~(c) A trade show case must be purchased by a registered vendor representative, as defined in ARM 42.11.211, from an agency liquor store at a cost of $12.00 per case.~~

~~(d) A vendor is limited to providing a maximum of nine thousand milliliters of each product per industry trade show.~~

~~(5) A beer manufacturer or a beer manufacturer's employees or agents who intend to provide beer at an industry trade show or a table wine manufacturer or the table wine manufacturer's employees or agents who intend to provide table wine at an industry trade show must purchase the beer or table wine from the licensee hosting the trade show for no more than the ordinary retail price.~~

(4) The department, a state agency of Montana, or a nonprofit association representing an alcoholic beverage industry may not sponsor more than two alcoholic beverage industry trade shows per year.

(5) An alcoholic beverage industry trade show may be held at:

(a) the licensed premises of an all-beverages licensee or on-premises consumption beer and wine licensee;

(b) a location catered by an all-beverages licensee or on-premises consumption beer and wine licensee; or

(c) a location not otherwise licensed if the trade show sponsor has commercial general liability policy (CGL) with liquor liability coverage or has obtained an event liability insurance policy (with liquor liability coverage) for the trade show with coverage limits no less than $1 million per occurrence / $2 million aggregate.

(6) Except as provided in (8), a beer manufacturer or a beer manufacturer's employees or agents who intend to provide beer at an industry trade show or a table wine manufacturer or the table wine manufacturer's employees or agents who intend to provide table wine at an industry trade show must purchase the beer or table wine, for no more than the ordinary retail price, from:

(a) the all-beverage licensee or on-premises consumption beer and wine licensee hosting the industry trade show if the trade show is held at a location allowed for in (5)(a) or (5)(b); or

(b) any all-beverage licensee or on-premises consumption beer and wine licensee if the industry trade show is held at a location allowed for in (5)(c).

(7) Except as provided in (8), a vendor, as defined in ARM 42.11.105, with a current vendor permit, as provided in ARM 42.11.213, may request a trade show case from the department for use at an industry trade show. A trade show case means a case of product used by a registered vendor representative for promoting a vendor's products to attendees of an industry trade show. For the purposes of this rule, product means a liquor item identified by a unique identification number or stock-keeping unit.

(a) Except as provided in 16-4-311, MCA, the vendor must ship the trade show case to the state liquor warehouse at no charge to the department.

(b) In order for an industry trade show case to be removed from bailment at the state liquor warehouse, a vendor must submit a request electronically on a form provided by the department at least seven days prior to the requested ship date to

the agency liquor store.

(c) A trade show case must be purchased by a registered vendor representative, as defined in ARM 42.11.211, from an agency liquor store at a cost of $12.00 per case.

(8) An alcoholic beverage manufacturer may use its own equipment, trucks, and employees or use a common carrier to deliver alcoholic beverages it produces from its premises to the alcoholic beverage industry trade show location.

(9) An alcoholic beverage trade show held at a licensed premises or at a location described in (5)(b) must serve only the types of alcoholic beverages authorized under the retail license and catering endorsement, where applicable.

(a) The alcoholic beverage manufacturer or its employees may serve samples with the permission of the licensee.

(b) All persons serving samples at an alcoholic beverage industry trade show shall be compliant with the Responsible Alcohol Sales and Service Act prior to the alcoholic beverage industry trade show.

(c) Only department-approved product samples may be served at the alcoholic beverage industry trade show.

(d) The allowable sample serving size per product, per person shall not exceed two ounces for liquor products, 12 ounces for beer products, and five ounces for wine products.

(e) The service of samples must be conducted so as to prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated.

~~(6)~~ (10) At the conclusion of an alcoholic beverage industry trade show, any remaining alcoholic beverages may not be given away to attendees and must be retained by the alcoholic beverage manufacturer or vendor, the alcoholic beverage manufacturer or vendor's employees, or registered vendor representatives ~~for a future industry trade show; used for sampling purposes; or given to attendees of the industry trade show at the discretion of the alcoholic beverage manufacturer or vendor, the alcoholic beverage manufacturer or vendor's employees or registered vendor representatives~~.

(11) An alcoholic beverage manufacturer is responsible for the payment of all applicable alcoholic beverage taxes on alcoholic beverage samples provided at an alcoholic beverage industry trade show which are not purchased from a licensed retailer or agency liquor store.

~~(7)~~ (12) A licensee who hosts or caters an industry trade show is ultimately responsible for ensuring compliance with all alcoholic beverage laws and regulations, violations of which may subject the licensee to administrative action.

AUTH: 16-1-303, 16-1-307, MCA
IMP: 16-1-307, 16-3-107, 16-4-201, 16-4-204, 16-4-311, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.150 to implement the enactment of 16-1-307, MCA, under House Bill 120 (2023) (HB 120). HB 120 allows alcoholic beverage manufacturers the ability to showcase alcoholic beverage products to alcoholic beverage industry trade show

attendees and is an expansion of this rule which the department adopted in 2019. Accordingly, ARM 42.12.150 requires amendment as follows:

1. The removal of current (1) and the amendment of current (2), renumbered as (1), because current text does not reflect the expanded sponsor allowance for an alcoholic beverage industry trade show.

2. Proposed (2) reflects a basic application and department approval process which the department contends is necessary for the effective administration of alcoholic beverage industry trade shows.

3. Section (3) reflects minor amendments relative to the revised name of these alcoholic beverage industry events and clarifies who are the authorized attendees of an alcoholic beverage industry trade show because they are not public events.

4. The text in current (4) has been moved to proposed (6) for improved structure of the rule and contains minor revision to reflect the limited exception specified in proposed (8). Current (5) is proposed for removal because the new law does not limit alcoholic beverage industry trade shows to vendors and beer manufacturers.

5. Proposed (6) through (9) are necessary to clarify sponsorship and hosting, where the events may be held, provide guidelines regarding the types of alcoholic beverages that may be served based on the event host's license type, the disposition of responsibility for the service of alcoholic beverage samples at an alcoholic beverage industry trade show, and to provide necessary sample size limitations.

6. Proposed (10) includes necessary amendments that strike obsolete vendor language from the rule and require the licensee who hosted the alcoholic beverage industry trade show retain any remaining alcoholic beverage inventory at the close of the event.

7. Proposed (11) is a necessary amendment to clarify manufacturer responsibility for the payment of alcoholic beverage taxes relative to the product samples provided to an alcoholic beverage industry trade show.

8. Proposed (12) contains a necessary, minor amendment to reflect a licensee who hosts an alcoholic beverage industry trade show as a caterer of alcoholic beverages.

9. Finally, the department proposes to add 16-1-307, MCA, as an authorizing and implementing citation, which is required by 2-4-305, MCA.

42.12.151 LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITY - PREMISES SUITABILITY REQUIREMENTS AND CONDITIONS FOR OPERATING (1) The department shall determine the suitability of the premises when a continuing care retirement community applies to obtain a limited all-beverage license provided in 16-4-315, MCA, changes the location where the license will be operated, or makes alterations to the department-approved premises. The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department except on-premises consumption may extend across the continuing care retirement community's campus, as provided in 16-4-315, MCA.

(2) The continuing care retirement community premises may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) no other license authorized under Title 16, MCA, will be operated concurrently at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located within one building or a specific portion of one building. The interior of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants;

(f) building, health, and fire code approvals are obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises complies with the licensing restrictions provided in 16-3-306, MCA;

(j) there are no signs, posters, or advertisements displayed on the exterior of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the adjacent building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

(k) the floor plan accurately states the dimensions of the premises, includes the applicant or licensee's name; alcoholic beverage license number, if applicable; physical address and date of application; and identifies the central dining area, any stationary drink preparation area, and any storage areas. A plat of the continuing care retirement community campus must also be provided to the department that shows the campus boundaries and any other structures located on the campus;

(l) the interior of the premises includes at least one stationary drink preparation area. The central dining area may have more than one drink preparation area, including moveable drink preparation areas, subject to department approval;

(m) all storage areas are located in the interior of the premises;

(n) alcoholic beverages will not be sold through a drive-up window;

(o) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and

(p) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises was last approved by the department. The department may, at any time, verify that the premises remain in compliance with those suitability standards. Upon determining that the premises does not meet all applicable suitability standards, the department may deny an application or take administrative action against the licensee, including license revocation.

(4) The licensee shall follow the process in ARM 42.13.106 for a premises alteration. Alterations to residential areas or other areas where alcoholic beverages are not sold or served from do not require submittal or approval from the department.

(5) In addition to all other alcoholic beverage licensing requirements, a limited all-beverages continuing care retirement community licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas;

(b) sell or serve alcoholic beverages only from an approved drink preparation area;

(c) prevent the sale or service of alcoholic beverages between 8 p.m. and 11 a.m.;

(d) prevent the consumption or possession of alcoholic beverages outside of residential areas between 2 a.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 2 a.m.;

(e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age, or actually, apparently, or obviously intoxicated, in accordance with 16-3-301, MCA; and

(f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas.

AUTH: 16-1-303, 16-4-315, MCA
IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-315, 16-4-402, 16-4-405, 16-6-303, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 160 removed a long-standing statutory restriction that beer advertising could not be applied to the exterior of a building adjacent to that of a retail licensee. Since that provision in rule is now obsolete, it is necessary for the department to remove it from ARM 42.12.151(2)(j).

42.12.152 NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) The use of a noncontiguous alcoholic beverage storage area by an on-premises retail licensee is permissible, as provided in 16-3-311, MCA. A noncontiguous alcoholic beverage storage area may be located within ten miles of the licensee's premises as measured in a straight line from the nearest entrance of the licensed premises to the nearest entrance of the noncontiguous storage area.

(2) The use of ~~a~~ resort alternate alcoholic beverage storage ~~facility is~~ facilities are permissible, as provided in 16-3-311 and 16-4-213, MCA.

(3) Except as provided in 16-3-311(7), MCA, ~~A~~ a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility must

only be used for the storage of alcoholic beverages and must have adequate physical safeguards to prevent access by individuals other than the licensee or their employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of either a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility:

(a) a completed noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility request form, as applicable;

(b) the application fee provided in 16-3-311 or 16-4-213, MCA;

(c) a copy of the floor plan for a noncontiguous alcoholic beverage storage area or the resort site plan and floor plan for a resort alternate alcoholic beverage storage facility;

(d) documentation of the licensee's possessory interest in the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility;

(e) documentation demonstrating that a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility meets the requirements of 16-3-311 and 16-4-213, MCA, as applicable, and (3);

(f) evidence of approvals from state or local officials that the premises meet building, health, and fire code requirements, as required by state or local law; and

(g) any additional documentation the department deems reasonably necessary in order to approve the licensee's request.

(5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of a noncontiguous alcoholic beverage storage area or a resort alternate alcoholic beverage storage facility and will review the inspection findings.

(6) The department will notify the licensee, in writing, of the department's approval or denial of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(7) Upon approval, a licensee's license will be updated to reflect the location of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility. The licensee must display a copy of the license in a prominent place at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(8) No alcoholic beverages may be stored by the licensee at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility prior to receiving department approval.

(9) The selling, giving away, or consumption of alcoholic beverages at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility is prohibited.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-311, 16-4-213, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 539 made several statutory changes, among them an amendment to 16-3-311, MCA, which allows noncontiguous storage

areas to be located within ten miles of a licensee's premises. Accordingly, the department proposes to amend ARM 42.12.152(1) to provide how the ten-mile limitation is measured.

The department proposes to amend (2) to comport with HB 539's allowance for additional resort alternate alcoholic beverage storage facilities. HB 539 also allows certain licensees to use up to three resort alternate alcoholic beverage storage facilities.

42.12.204 TREATMENT OF A LICENSE OF AN INCAPACITATED OR DECEASED LICENSEE; NOTICE AND DOCUMENTATION REQUIREMENTS

(1) ~~Alcoholic beverages licenses may be transferred to the personal representative of the estate of any deceased licensee in accordance with appropriate probate proceedings.~~ Pursuant to 16-4-431, MCA, in the event of the death or the judicial determination of incapacity of a licensee, the appointed conservator, guardian, personal representative, executor, or administrator must notify the department within 90 days of their appointment. In any event, the department must be notified within 180 days of the death or the judicial determination of incapacity of a licensee or owner of a licensee.

(2) An appointee's notice under (1) may be made by telephone, in writing, via electronic mail, or through submission of a department-provided form.

(3) ~~In all such cases a certified copy of the death certificate or of administration~~ Documentation of the appointee's appointment must be ~~filed with~~ provided to the department within 30 days of the notice required in (1).

(4) An appointee may request department approval to continue operation of the licensed business for the duration of the existing license and to renew the license when it expires. In such case, the appointee must meet the licensure requirements set forth in 16-4-401, MCA, and pay all applicable license renewal, fingerprint, and license application fees.

(a) The department will not authorize an appointee's continued operation of a licensed business absent the documentation required in (3).

(b) If an appointee does not meet the requirements of (3) or this section, or elects not to operate the licensed business, the department shall place the license on approved non-use pending the outcome of a successor appointee, the sale or transfer of the affected license described in (5), or receipt of a judicial determination of licensee's restored capacity. This non-use is not subject to the requirements of 16-3-310, MCA.

(5) An appointee, as personal representative of a licensee or owner of a licensee, must provide the department with ~~A~~ a certified copy of the decree of distribution or order of settlement ~~affecting the license and~~ confirming the sale and/or transfer of the license ~~must also be filed with the department in connection with the transfer of the license~~ to ~~the~~ a distributee or purchaser. The distributee or purchaser of an alcoholic beverages license must comply with all licensing criteria before the transfer of the license will be approved by the department.

~~(2)~~ (6) If an alcoholic beverages license is owned by joint tenants with right of survivorship, ~~it~~ ownership of the license may be ~~reissued in the name of~~ amended to reflect the surviving joint tenant or tenants, upon presentation of proof of death of the decedent joint tenant or tenants.

(7) In all other cases, upon the death of a licensee it is necessary to apply for transfer of ownership of the license as provided by 16-4-204 and 16-4-404, MCA.

AUTH: 16-1-303, 16-4-431, MCA
IMP: 16-4-204, 16-4-404, 16-4-431,MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.204 to implement House Bill 43 (2023) (HB 43) which revised alcohol laws relating to the death or incapacity of a licensee or owner of a license. HB 43, proposed as a part of Governor Gianforte's Red Tape Relief Initiative, establishes notice requirements for court-appointed representatives when a death or incapacity of a licensee occurs because appointees (e.g., personal representatives and conservators) are often unaware of the regulatory framework associated with alcoholic beverages licenses in Montana; and reflects numerous experiences the department has had with unreported licensee deaths and the continued operation of the licensed business by unapproved individuals. HB 43 amendments to statute provide notice to court-appointed representatives and licensees while allowing flexibility for judicial proceedings that are often times beyond the control of the licensee, the court-appointed representative, and the department.

As a result of HB 43, ARM 42.12.204 requires amendment to support the expanded allowance of appointees and provide procedural guidance. The first amendment changes the rule's catchphrase to expand the scope to include incapacitated licensees, new notice requirements, and that documentation to the department is required.

Amendments in (1) propose a necessary reiteration of the statutory appointee types and reporting deadlines to the department relative to an appointment (90 days) or in all other cases (180 days).

Section (2) proposes to provide an appointee options for the required notification. Development of a department form is pending but the department desires to place the text into the rule in anticipation of the completion of the form upon adoption of this rulemaking.

Section (3) proposes to explain that formal documentation is required based on the type of court-appointed representative and establishes a deadline for the submission of documentation because appointee notification and the provision of documentation may not always coincide.

Section (4) proposes procedural guidance for appointees, confirms documentation and licensure requirements, and the continued payment of all licensing fees. Subsections (4)(a) and (b) propose options for appointees who are unresponsive to the statutory requirements, choose not to operate, are precluded from operating the licensed business, or where capacity of a licensee is uncertain, and a subsequent judicial determination of restored capacity is possible. In these cases, imposition of non-use status is a reasonable solution and requires minimal engagement by an appointee with the department.

The amendments to (5) propose increased clarity, improved sentence structure, and incorporate 16-4-431, MCA, terminology.

Section (6) amendments propose to improve clarity and structure by separating the final sentence into a standalone section, proposed (7), to address

what is to occur for all other matters involving a deceased licensee that are not already addressed in rule.

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN (1) All-beverages and on-premises beer and wine licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a copy of the note or mortgage, security agreement, or other loan document (in which the license or licenses to be affected are described with common certainty such as inclusion of license number), together with a fee as required in ARM 42.12.111, the department will add the name of the mortgagee, secured party, or other lien holder, which must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder.

(2) No transfer of any license subject to any mortgage security interest, or other lien shall be approved unless the mortgagee, secured party, or lien holder shall subscribe and acknowledge the instrument of assignment. If the mortgagee, secured party, or lien holder is deceased, or otherwise unavailable, the instrument of assignment may be subscribed and acknowledged by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien.

(3) At such time as any mortgage, security interest, or lien affecting any license has been satisfied and fulfilled, the name of the mortgagee, secured party, or lien holder shall be removed upon written request of all parties in interest. If the mortgagee, secured party, or lien holder is deceased, or otherwise unavailable, the written request may be made by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any name of a mortgagee, secured party, or lien holder may also be removed upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(4) Alcoholic beverage licenses may be subject to security interests as defined in 30-1-201, MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverages license does not depend upon filing with the department, but rather by the statutory requirements, which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9A-102, MCA, desires to give additional public notice, he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens. The licensee must be the debtor. A loan guarantee by a licensee does not establish a valid security interest or lien by the lender under this rule.

(5) The consent of a secured party or a lien creditor is not required by the department to transfer a license. Persons who have filed a claim of a security interest or lien will be given notice by the department of any application for transfer of the license.

(6) Upon written request to the department, together with a fee as required in ARM 42.12.111, the name of a person claiming a security interest shall be endorsed upon the license and shall be kept on file with the department. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the person claiming the security interest.

(7) The name of a lien creditor shall not be endorsed upon the license. However, upon written request to the department, the department shall keep the name of the lien creditor on file. The request must be accompanied by sufficient proof of perfection of the lien claimed. No fee is required.

(8) Any notice of security interest or other lien may be deleted from the department's file upon written request of the secured party or lien creditor on forms prescribed by the department. If the secured party or lien creditor is deceased, or otherwise unavailable, the written request for deletion may be made by a personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any notice of security interest or other lien may also be deleted from the department's file upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(9) A security interest or other lien may be foreclosed upon in any manner provided by law. In nonjudicial foreclosures, the department will require sufficient documentation that the proper foreclosure proceedings were followed, pursuant to 16-4-801, MCA. Purchasers of a license at a foreclosure sale must apply to the department for transfer of the license and are subject to all statutes and rules required of any other applicant.

(10) Sections (1) through (3) will apply to all security interests and liens filed with the department prior to September 1, 1990. Beginning September 1, 1990, (4) through (9) will apply to all new security interests and liens filed with the department.

AUTH: 16-1-303, MCA
IMP: 16-4-204, 16-4-404, 16-4-801, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 68 removed the optional wine amendment to a retail on-premises consumption beer license, which is now included with the license and is referred to as an on-premises consumption retail beer and wine license. The department finds it necessary to amend ARM 42.12.205(1) to reflect the change to the referenced license type.

42.12.208 TEMPORARY OPERATING AUTHORITY (1) The department may grant an applicant temporary operating authority, as provided in ~~16-4-404~~ 16-4-433, MCA~~, only for the transfer of ownership of a license~~. The applicant must submit an application meeting the requirements of ARM 42.12.101 and intend to operate the licensed business pending final approval. ~~The department may not grant temporary operating authority on an application for an original license or when there is a proposed change of location.~~

~~(2) The granting of temporary operating authority is neither a temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee that the department will grant the application if it finds, subsequent to receipt of a complete investigation report, that the applicant is not qualified to hold a license or the premises are not suitable for the operation of the business~~.

~~(3)~~ (2) Temporary operating authority will be issued for ~~a 45-day~~ one period not to exceed 180 days. ~~If the application is not approved within this period, the department shall extend temporary operating authority for another 45-day period only upon determining that the cause of the delay was not attributable to the applicant. The department shall notify the applicant if it requires additional information to make this determination and the applicant shall have seven days to submit written verification documenting to the department's satisfaction how the delay was beyond the applicant's control. The department shall notify applicants whether temporary operating authority is extended beyond the initial 45-day window.~~

~~(4)~~ (3) ~~The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary operating authority has expired and cannot be extended.~~ If temporary operating authority has expired or been revoked, the applicant shall cease all operations and, in the case of a transfer of ownership, the licensee shall resume operations or place the license on nonuse.

~~(5)~~ (4) Temporary operating authority will be immediately revoked if the applicant to whom temporary operating authority was granted, or the applicant's employees, violate any provisions of Title 16, MCA, or department rules. Such violations may affect the final decision of the department.

~~(6)~~ (5) Any proposed fine, suspension, or revocation arising out of a violation will be assessed against, and is the responsibility of, the recorded owner of the license.

AUTH: 16-1-303, MCA
IMP: 16-4-404, 16-4-433, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.208 to implement House Bill 71 (2023) (HB 71) which enacted 16-4-433, MCA. Section 16-4-433, MCA, includes eligibility requirements, duration, and clarifies the ability for the department to grant, deny, and revoke temporary operating authority. Amending the rule is necessary to remove obsolete provisions, for general continuity with the statute, and to provide clear guidance to licensees and applicants when temporary operating authority has expired or been revoked.

42.12.209 TRANSFER OF OWNERSHIP OF A LICENSE ~~TO ANOTHER PERSON~~ (1) An ownership interest may be transferred to another qualified person only pursuant to means legally authorized for the transfer of personal property in Montana, such as when the person:

(a) is a purchaser upon a bona fide sale;

(b) is the distributee of a license from a personal representative of the estate of a deceased licensee;

(c) has a security interest in a license ~~being foreclosed~~ subject to foreclosure;

or

(d) is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA~~; or~~

~~(e) is appointed receiver under the license receivership~~.

(2) Except as allowed in ARM 42.12.118, an ownership interest may not be transferred until ~~an~~ a transfer application ~~reflecting the proposed transfer~~ is submitted to the department and the department approves the application.

(3) A current ownership interest of less than 15 percent may not be increased to 15 percent or more until an application reflecting the proposed increase is submitted to the department and the department approves the application.

(4) The application process in ARM 42.12.101 shall be followed unless an abbreviated application is authorized by ARM 42.12.118.

(5) Before approving a transfer of ownership application, ~~The~~ the department shall make a thorough investigation as to the qualifications of ~~the~~ an applicant and the suitability of the premises proposed for licensing. The department must also determine that ~~the~~ a transferred ownership interest ~~will be~~ is being independently exercised by a transferor to ~~the~~ a new owner and will not remain under the control of the transferor ~~before approving the transfer~~.

(6) The department shall not approve an application for a transfer of an ownership interest where the current owner is not current on the filing or payment of Montana state taxes or liquor fees, fines, or penalties.

(7) Prior to the department granting its written approval of a transfer of ownership interest:

(a) a certificate, stock, or other evidence of the proposed ownership interest may not be registered in the licensee's records; and

(b) earnest money may be paid to the license seller, not to exceed five percent of the license purchase price, but any additional funds or other consideration for the license or alcoholic beverage inventory may not be exchanged unless:

(i) temporary operating authority is granted, but any consideration other than earnest money must be returned to the buyer in the event the application is not approved; or

(ii) the consideration is held in escrow.

(8) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a license pursuant to 16-4-801, MCA;

(b) addition of an individual or entity as a less than 15 percent owner;

(c) death of a licensee (ARM 42.12.204 applies); or

(d) foreclosure of a security interest in a license or in an ownership interest (ARM 42.12.211 applies).

(9) ~~Any~~ A person or entity that is not ~~a licensee~~ approved by the department is prohibited from controlling or participating in the licensed operation in any capacity reflecting an ownership interest. A licensee's allowance of an undisclosed ownership interest shall constitute a violation and may subject the licensee to administrative action, including revocation of the license.

(10) The department, in its sole discretion, may waive an application requirement set forth in this rule.

(11) The buyer of the license can acquire the seller's alcoholic beverage inventory ~~when either temporary operating authority has been granted to the buyer~~

~~pursuant to ARM 42.12.208 or the transfer of the license to the buyer has been approved by the department~~ as provided in 16-4-404, MCA.

AUTH: 16-1-303, MCA
IMP: 16-4-401, 16-4-402, 16-4-404, MCA

REASONABLE NECESSITY: As a companion to the department's proposals and statement of reasonable necessity to amend ARM 42.12.204, the department also proposes to amend ARM 42.12.209 to implement HB 43 which revised alcohol laws relating to the death or incapacity of a licensee or owner of a license.

The first amendment proposes to change the rule's catchphrase for clarity and to remove limitations of transfers to "persons."

The remaining amendments are proposed to improve the rule through increased clarity of the rule text and sentence structure for what is to occur for cases involving the transfer of a license.

42.12.307 RESORT AREA DETERMINATION APPLICATION PROCESS

(1) A developer or landowner seeking a resort area designation shall submit to the department, at its sole expense:

(a) a completed application for resort area determination;

(b) a plat or master plan of the resort area;

(c) details of the recreational resort facilities that are or will be within the resort area, as that definition is described in ARM 42.12.302;

(d) processing fees as provided in ARM 42.12.111;

(e) except as provided in (2), an appraisal from an appraiser, as defined in 37-54-102, MCA, which provides a detailed analysis of the current actual valuation of the resort or recreational facilities, including land and improvements, of not less than ~~$1~~ 10 million, at least ~~half~~ $5 million of which valuation must be for a structure or structures within the resort area; and

(f) any other reasonably necessary documents for the department to reach a final decision.

(2) A developer or landowner may request the use of the department's statutory valuation of the property for property tax purposes to determine the current actual valuation requirements in (1)(e).

~~(2)~~ (3) If the documents in (1) are not provided, the department will notify the developer or landowner of the missing items and request submission prior to the hearing date.

AUTH: 16-1-303, MCA
IMP: 16-4-212, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.307(1)(e) and to add new (2) to implement Senate Bill 59 (2023) (SB 59). SB 59 increased the valuation requirements to qualify for a resort area determination and provided an allowance for the developer or landowner to utilize and submit the department's statutory valuation of the property for property tax purposes as its required appraisal.

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES

(1) A special permit issued pursuant to 16-4-301, MCA, entitles the holder to sell and serve beer and/or table wine at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas, described in the application and approved by the department. A holder of any such permit, or his agents or employees may also sell and serve beer and table wine in the grandstand or bleacher.

(2) A special event may only last for a maximum of three days except that each permit holder may have one special event per year that lasts up to seven days for a fair if it is a county, state, or regional fair that occurs no more than once per year, is held on a publicly owned fairgrounds, and is officially sanctioned by a government entity.

(3) Special permits issued under 16-4-301, MCA, entitle the holder to sell and serve liquor, beer, and/or table wine at retail only within the hall or building described in the application. A holder of a special permit, the holder's agents, or employees may not sell liquor, beer, and/or table wine to persons other than members of the permittee organization and their bona fide guests. Where posts of nationally chartered veterans organizations or lodges of a recognized national fraternal organization do not own or maintain a permanent post, lodge building, or hall, the department may issue a special permit to the organization for use at premises where the post or lodge regularly meet to conduct its meetings or community related events.

(4) Beer wholesalers and table wine distributors shall not:

(a) allow their employees to assist a special permittee or catering permittee in the sale of beer and/or table wine, except for setting up equipment for sale and service of beer or table wine; or

(b) sell beer and/or table wine to a special permittee or catering permittee on a consignment basis.

(5) A special permittee or catering permittee may use portable equipment furnished by a wholesaler in accordance with 16-3-241, MCA.

AUTH: 16-1-303, MCA
IMP: 16-3-103, 16-3-241, 16-4-301, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.323(1) to implement Senate Bill 59 (2023) (SB 59). Among its other enactments, SB 59 expanded 16-4-301, MCA, to allow service of table wine in the grandstands or bleacher area when a special event is being held with a special permit, so the proposed amendment in (1) aligns with the change in the law.

42.12.324 SPECIAL PERMITS (1) A special permit application must be completed and approved by the department when requesting the ability to sell beer and table wine to patrons attending a special event. The holder of a special permit must abide by all applicable laws governing the retail sale of beer and table wine for on-premises consumption.

(2) The length of time for which a special permit can be issued is determined by the fact that there is an outcome, conclusion, or result. For example, the winner of a baseball tournament or the end of a concert.

(3) A special permit issued to an association or corporation pursuant to 16-4-301(1)(c), MCA, is used for professional sporting contests or junior hockey contests during seasons of play only.

~~(3)~~ (4) Except as provided in 16-4-301(1)(e), ~~An~~ an applicant for a special permit cannot have an ownership interest in a manufacturer, importer, bottler or distributor of alcoholic beverages or ownership in an agency liquor store.

~~(4)~~ (5) Any on-premises consumption retail licensee entitled to a catering endorsement will not be issued a special permit, except for veteran and fraternal licensees as provided for in 16-4-301, MCA.

~~(5)~~ (6) Only one permit is required for multiple locations where beer and table wine are sold within the enclosure where the event is held. All locations must be described on the permit application. A copy of the permit must be posted at each location.

~~(6)~~ (7) A special permit cannot be issued to a location where another permit or license is issued.

~~(7)~~ (8) Private parties where no money or other consideration is exchanged such as weddings or office parties are not required to obtain a special permit.

~~(8)~~ (9) ~~A special permit is subject to the provisions of 16-3-306, MCA, unless the entities in 16-3-306, MCA, provide the department with advanced written approval.~~ The department may revoke a special permit if the permit holder fails to operate the sale of alcoholic beverages at the special events in compliance with the alcoholic beverage laws and rules.

AUTH: 16-1-303, MCA
IMP: 16-3-306, 16-4-301, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.323, it is also necessary for the department to amend ARM 42.12.324 to implement SB 59. In addition to table wine sales under a special permit in (1) and (6), the department proposes to add new (3) to align with 16-4-301, MCA, that a special event holder permit is approved for the season of sporting contests or junior hockey contests only.

The department also proposes to strike the first sentence in proposed (9) because the provisions in 16-3-306, MCA only apply to retail licensees. Special permittees are not licensees and therefore are not subject to 600-foot proximity restriction.

42.12.501 DEFINITIONS The following definitions apply to this subchapter:

(1) "Bidder" means an individual or business entity.

(2) "Competitive bid form" means an electronic form provided by the department and submitted by a bidder, to enter a competitive bidding process.

(3) "Competitive bidding" means a process to select a bidder to submit an application for licensure.

~~(4) "Irrevocable letter of credit (ILOC)" means a letter of credit between a financial institution and a bidder, in accordance with Title 30, chapter 5, MCA, in which the issuing financial institution guarantees:~~

~~(a) the bidder's payment of a stated bid amount;~~

~~(b) the ILOC will be irrevocable for a minimum of one year from the date of the competitive bidding closing if the bidder's bid is the highest bid submitted for the available license;~~

~~(c) the department is named as beneficiary of the ILOC; and~~

~~(d) the financial institution will not modify the ILOC without the department's consent if the bidder's bid is the highest bid submitted for the available license.~~

~~(5)~~ (4) "Minimum bid amount" means the lowest acceptable bid amount. The minimum bid amount shall be set by the department at 75 percent of the market value of licenses of the same type and privileges that have sold within the quota area or similar quota area.

~~(6)~~ (5) "Pivotal straight line" means a line that is created from the center point of two overlapping incorporated cities' or incorporated towns' boundaries and extends outward in a manner that separates the two quota areas as close to equidistant as possible.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.501 to implement House Bill 144 (2023) (HB 144). HB 144 removed the requirements from the licensing statutes that a bidder in a competitive bid for an alcoholic beverage license must submit an irrevocable letter of credit with the bidder's bid form. Since the requirement is obsolete, the department must strike the definition in (4).

42.12.502 PUBLISHING OF ALCOHOLIC BEVERAGE LICENSE AVAILABILITY (1) The department shall publish the availability of a retail alcoholic beverage license, that is subject to the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, when:

(a) a new license becomes available in a quota area in which a license of the same type is not currently available in the quota area;

(b) the opportunity to transfer a license into a quota area becomes available in which a license of the same type is not currently available in the quota area; and

(c) the lapse, revocation, or issuance of a license within the quota area in which the license is located has created the last remaining license for that license type in the quota area; and

(d) the department's denial of an application for licensure or the applicant's withdrawal of an application for licensure has created the last remaining license for that license type in the quota area.

~~(2) No more than one license per license type per quota area may be published per calendar year until the quota has been reached for licenses that became available due to the separation of combined quota areas.~~

~~(3)~~ (2) The department shall publish the availability of the license once a week for ~~four~~ two consecutive weeks in ~~the~~ a newspaper ~~of general circulation~~ in the ~~quota~~ area. The publication notice shall include:

(a) the type of license(s) available;

(b) the reason for the availability;

(c) the instructions for submitting a competitive bid form;

(d) the minimum bid amount; and

(e) that the department will use a competitive bidding process for determining who is granted the opportunity to apply for licensure.

(3) Concurrent with the notice of publication in (2), the department will post the availability of a license on the department's website until the competitive bid deadline provided in ARM 42.12.503(2), and will send an electronic notification to any individuals who have signed up with the department to receive competitive bid notices.

(4) The department has the right to cancel or amend a competitive bidding process at any time. If a competitive bidding process is cancelled, the department shall notice the availability of the license, if applicable, in a future publication.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.502 to implement HB 144. Since HB 144 removed the statutory language limiting how many licenses the department may publish for competitive bid within a year, current (2) of the rule is obsolete and must be removed.

The department proposes to reduce the number of publications per competitive bid described in proposed (2) from four weeks to two weeks to expedite the bid process, given the removal of the irrevocable letter of credit requirement. The department also proposes to amend references to newspapers of general circulation in the quota area because reliance and compliance with newspaper circulation as effectuating official notice are outdated and logistically difficult and cost prohibitive; yet the statute still requires publication. The department believes the amendments are a reasonable balance until a legislative solution to amend the statute is presented.

The department also proposes new (3) which formally adopts the department's business practice of electronic notifications into the competitive bid rule because there is a more contemporary, efficient, and cost-effective way to inform the public of competitive bidding opportunities other than local newspapers. The department does not believe that the reduced publication time and use of alternate notifications will have any adverse effects on those individuals interested in competitive bidding for a license.

42.12.503 RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BID FORMS (1) Competitive bid forms must be submitted electronically to the department.

(2) The deadline to submit a bid is ten business days from the date of the last publication notice required in ARM 42.12.502~~(3)~~(2).

(3) The department shall notify the highest bidder, in writing, if any deficiencies exist on the highest bidder's bid form. The highest bidder shall have the opportunity to correct any deficiencies by submitting a revised bid form within five business days of being notified.

(4) A bidder will be disqualified from the competitive bidding process if:

(a) the competitive bid form is not received on or before the deadline;

(b) any individual listed as an owner, partner, member, officer, or director is younger than 19 years of age at the time of the competitive bid closing; or

(c) the bidder's bid amount is less than the minimum bid amount~~;~~ .

~~(d) the bidder fails to include an irrevocable letter of credit from a financial institution;~~

~~(e) the irrevocable letter of credit fails to identify the department as the beneficiary; or~~

~~(f) the irrevocable letter of credit is not equal to or greater than the bidder's bid amount.~~

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-401, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.501 and 42.12.502, the department proposes to amend ARM 42.12.503(4) to implement HB 144; and the removal of the text in (4) is consistent with the revised law.

Based on the proposed amendment to strike ARM 42.12.502(2), the department must amend the cross-reference in (2) of this rule.

42.12.504 DETERMINATION OF SUCCESSFUL COMPETITIVE BIDDER AND SUBMISSION OF COMPLETED APPLICATION (1) The department shall rank all qualified bidders by bid amount.

(2) In the event a bidder places multiple bids, the department shall accept the highest bid placed by the bidder.

(3) In the event of the highest bid resulting in a tie, the department shall notify those bidders to request the bidders to submit a new bid ~~and irrevocable letter of credit~~.

(4) The department shall notify the highest (i.e., successful) bidder in writing. The department shall also notify all other bidders that the ~~highest~~ successful bidder was notified.

(5) The ~~highest~~ successful bidder shall have 60 days to submit the application for licensure from the day the notification was received. Up to 60 additional days may be granted to the ~~highest~~ successful bidder upon the department receiving and approving a written request by the ~~highest~~ successful bidder that explains the need for additional time. If the ~~highest~~ successful bidder does not submit a completed application for licensure within the allotted time, the ~~highest~~ successful bidder will be disqualified. Once the successful bidder submits its license application ~~for licensure has been submitted~~ to the department, the ~~highest~~ bidder becomes ~~an~~ the applicant for all purposes relative to the requirements and qualifications for licensure.

(6) ~~The information provided by the applicant on the application for licensure must match the information provided on the competitive bid form. Failure to provide identical information will result in denial of the application.~~ All applications for licensure must be made in the name of the individual successful bidder of the competitive bid, or a business entity that is wholly owned by the successful bidder. For example, John Doe is the successful bidder of a license in a competitive bid process, so the applicant for the issuance of the license may either be John Doe, individually, or a corporation or limited liability company in which John Doe maintains the only ownership interest.

(7) License applications that do not comply with (6) will be disqualified and the department will proceed as provided in (10).

~~(7)~~ (8) The applicant must meet all other licensing and premises suitability requirements in order for a license to be issued by the department. Once the application has been approved by the department, the applicant becomes a licensee.

~~(8)~~ (9) Failure to pay the bid amount by the time the department is ready to approve the license will result in disqualification and the application for licensure will be denied.

~~(9)~~ (10) If the application for licensure is not approved or the license is forfeited pursuant to 16-4-430(7), MCA, the next highest bidder will be notified in writing. ~~The next highest bidder will have two weeks to submit an irrevocable letter of credit for their bid amount if the original letter of credit was cancelled.~~ The next highest bidder shall comply with the requirements of (5) through ~~(8)~~ (9) and 16-4-430(4), MCA.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.501 through 42.12.503, the department proposes to amend ARM 42.12.504(6) and (9) to implement HB 144 and the removal of the text in the sections is consistent with the revised law.

The department also proposes amendments to (4) and (5) to improve sentence structure and to clarify bidder referencing for consistency with the rule's catchphrase, such as clarifying instances where "successful" bidder is more appropriate than "highest" bidder when describing the results of a competitive bid for a license.

The department also proposes to amend (6) and proposes new (7) to clarify the requirement that the successful bidder for a license submit a license application with the same ownership structure as submitted in the competitive bid form, excepting only the form of entity ownership. This requirement is necessary to maintain integrity of the competitive bid process while allowing a modest business planning allowance for the successful bidder to hold the license.

42.13.106 ALTERATION OF PREMISES (1) Any alteration to licensed premises, other than a cosmetic change, must be approved by the department.

(a) An alteration that increases the premises' square footage must receive preapproval.

(b) An alteration that does not increase the premises' square footage must be submitted within seven days from its commencement.

(2) A licensee must submit a request to alter the premises and provide copies of the current and proposed floor plans meeting the requirements of ARM 42.12.101.

(3) Upon receipt of the items in (2), the department will notify the licensee within seven business days of the approval or denial of the alteration request.

(4) The department's approval of an alteration request shall be valid for one year. An alteration not completed within one year must be resubmitted to the department for another approval.

(5) If the alteration prevents the licensee from continuing operations, the licensee shall request nonuse status pursuant to ARM 42.13.107.

(6) Upon completion of the alterations, the licensee is responsible for ensuring the department receives notification of building, health, and fire code approval for the premises, if any such permits were required.

(7) ~~Upon receipt of the building, health, and fire code approvals, the~~ The department will arrange for an inspection of the premises ~~by the Department of Justice~~ upon completion of the alterations or upon receipt of the building, health, and fire code approvals as described in (6).

(8) The department will review the Department of Justice's findings and, upon determining no issues are present, the department shall notify the licensee that the alteration is approved, and any new addition is now part of the licensed premises. Prior to receiving this written approval, a licensee shall not operate in any area that has not been previously approved.

(9) Any alteration to licensed premises, other than a cosmetic change, without approval shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA
IMP: 16-3-302, 16-3-311, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.106(2), which is necessary for consistency with the department's proposed amendments to ARM 42.12.101(3)(e) regarding floorplans, and amend (6) and (7) to implement other enactments of HB 539. HB 539 revised 16-3-311(2), MCA, which does not require an alteration to be inspected by local government agencies if the alteration did not require a building permit. The proposed amendments add the new statutory condition but maintain the historic references to building, health, and fire code approvals because premises alterations may impact any combination of those three customary inspections that relate to suitability to which the department gives deference.

The department also proposes the minor punctuation amendment in (8) for improved sentence structure.

42.13.107 NONUSE STATUS (1) The department shall grant nonuse status to a licensee who:

(a) is issued a license without an approved premises as provided in 16-4-417, MCA; or

(b) is not operating a going establishment if the licensee ~~submits a written verification documenting to the department's satisfaction how the nonuse is beyond the licensee's control and the request is received~~ provides written notice to the department prior to exceeding 90 days of not operating a going establishment.

(2) Except as provided in (3) or in 16-4-431(2), MCA, an approved nonuse period shall not exceed one year.

(3) The department may extend the one-year nonuse period if the licensee provides evidence that the delay in use is for reasons outside the licensee's control, that the licensee is progressing on a department-approved alteration, or for licenses issued without a premises, the licensee is making progress toward licensure. Acceptable reasons for ~~not operating a going establishment~~ extending the nonuse period may include but are not limited to:

(a) the death of the licensee or the licensee's family member;

(b) a natural disaster;

(c) a department approved alteration is underway or is pending department approval; ~~or~~

(d) the licensee lost possessory interest in the premises~~.~~; or

(e) bankruptcy.

~~(3) The approved nonuse period shall not exceed one year.~~

(4) Prior to expiration of the approved nonuse period, the licensee shall resume operations and notify the department that operations have resumed.

(5) If a licensee fails to timely resume operations or provide the required notification, the department shall lapse the license pursuant to 16-3-310, MCA, and ARM 42.13.108.

(6) A licensee cannot resume operations of a license at premises where the licensee:

(a) was granted nonuse status for the license; and

(b) operated another license at the premises while the previous license was on nonuse status.

~~(7) The department shall deny a request for nonuse status if the licensee has been granted nonuse status for the license within the previous six months, unless the request is based upon reasons other than voluntary closure due to adverse economic conditions or a proposed sale of a license.~~

~~(8)~~ (7) A licensee may not purchase, sell, or otherwise provide alcoholic beverages while on nonuse status. This includes catering events and operating through a concession agreement.

(8) The amount of time spent on nonuse status does not count towards the operational requirement provided in 16-4-417 and 16-4-432, MCA.

(9) A license issued pursuant to 16-4-101, 16-4-107, and 16-4-311, MCA, may be granted nonuse status if the licensee submits a written request to the department prior to exceeding 90 days of not operating.

(10) A licensee granted nonuse status pursuant to (9) may not produce, purchase, sell, distribute, or otherwise provide alcoholic beverages while on nonuse status.

AUTH: 16-1-303, 16-4-417, 16-4-431, MCA
IMP: 16-3-310, 16-4-417, 16-4-431, 16-4-432, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.107 primarily to implement statutory exceptions regarding nonuse which were enacted through House Bills 123 and 166 (2023) (HB 123) (HB 166). HB 123 and HB 166 allow the department to extend nonuse status past one year if the licensee provides evidence that the delay is for reasons outside their control or that they are progressing on a department-approved alteration.

The department proposes amendments to (1)(b), (2), (3), and (7) based on legislation and also department review of 16-3-310, MCA, which concluded the statute does not require substantiation of a licensee's first 90-day nonuse request found in (1), nor does it contemplate the specified conditions found in (7). The rule should also be amended through the proposed reorganization of content in (2) and (3). Other proposed changes reflect improvements in rule language.

Section (8) proposes to implement HB 123's enactment of 16-4-432, MCA, which requires that a licensee operate the license for at least one year prior to transferring the license to another person or business entity unless that transfer is due to a death of an owner. It is also necessary to clarify in (8) that when a license is on nonuse status it is not operational and, therefore, does not count toward the 16-4-432(1)(b), MCA, requirement.

The department proposes new (9) and (10) under its general rulemaking authority which the department believes is a necessary addition to the rule to allow manufacturers to put their respective licenses on nonuse status.

Finally, the department proposes to add 16-4-431, MCA, as an authorizing citation and 16-4-417, 16-4-431, and 16-4-432, MCA, as implementing citations, which is required by 2-4-305, MCA.

42.13.109 SEVEN-DAY CREDIT LIMITATION (1) A ~~brewery license~~ brewer, beer importer, ~~a~~ beer wholesaler ~~license~~, ~~a~~ winery ~~license~~, or ~~a~~ table wine distributor ~~license will be suspended or revoked or otherwise sanctioned~~ is subject to a penalty under 16-4-406, MCA, if credible evidence demonstrates that ~~a licensee~~ they extended credit to a retail licensee for more than seven days or sold and delivered beer to a retailer who has unpaid deliveries that exceed seven days.

(2) ~~A retailer's license will be suspended or revoked or otherwise sanctioned~~ A retail licensee is subject to a penalty under 16-4-406, MCA, if credible evidence demonstrates that the retail licensee accepted credit extended by a brewer, beer importer, ~~or a~~ beer wholesaler, winery, or table wine distributor for more than seven days for the purchase of beer or table wine or failed to pay a brewer, beer importer, beer wholesaler, winery, or table wine distributor within seven days from the date the beer or table wine was delivered.

(3) The first day of the seven-day credit period begins at 8 a.m. on the day after the delivery.

(4) Criteria which demonstrates credit has been extended are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler does not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) wholesaler does not have documentation of efforts to collect payment; or

(e) (a), (b), (c), and the wholesaler has no documentation to show further product delivery was terminated.

(5) Criteria which demonstrates credit has been accepted:

(a) wholesaler delivered product to retailer;

(b retailer or wholesaler does not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) product has not been returned by retailer.

(6) When a license is sold and a debt to a beer and wine wholesaler remains unpaid, the debt becomes the obligation of the new owner of the license. Based on the seven-day credit limitation, the wholesaler may not sell to the new licensee until the previous debt is paid in full.

AUTH: 16-1-303, MCA
IMP: 16-3-243, 16-3-406, 16-4-404, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.109 which is necessary to implement House Bill 95 (2023) (HB 95). HB 95 revised and modernized 16-3-243, MCA, regarding payment of beer delivered by a brewer or beer wholesaler to a licensed retailer. The department's proposed amendments reflect the updates of industry terminology in statute and the license types that are subject to the statutory credit limitation.

42.13.111 DEFINITIONS The following definitions apply to this chapter:

(1) "Alteration" means a structural change or a modification to the premises other than a cosmetic change. Examples include adding a patio or removing a half wall.

(2) "Building" means an enclosed structure with external walls and a roof. Separate structures or structures connected by skyways are not considered one building for licensing purposes.

(3) "Contiguous" means touching or sharing a common border.

(4) "Contract packaging" means blending, bottling, packing, and/or filling of a distilled spirits product by a domestic distilled spirits plant for another distilled spirits plant.

(5) "Cosmetic change" means a nonstructural change to the premises. Examples include painting, carpeting, and other interior decorating.

(6) "Coupons" are certificates or tickets entitling the holder to a specified right, as redemption for cash or gifts or reduced purchase price.

(7) "Distilled at the microdistillery" means the process of vaporization and subsequent condensation of a beverage containing ethyl alcohol that occurs at the licensed premises.

(8) "Distilled spirits" means alcoholic beverages that contain ethyl alcohol and generally are the result of distillation of fermented materials. Examples include

whiskey, gin, vodka, cordials, liqueurs, and flavored brandies. Distilled spirits do not include alcoholic beverages that are defined as beer or wine by the Montana Alcoholic Beverage Code.

(9) "Distilled spirits plant" means a plant at which distilled spirits are manufactured, produced, aged, stored, packaged, or bottled.

(10) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.

(11) "Flavors and nonbeverage ingredients containing alcohol" means any intermediate product containing alcohol that is used in the production of beer.

(12) "Floor plan" means a diagram with measurements of the premises as seen from above.

(13) "Fortified wine" means wine that contains more than 16 percent, but not more than 24 percent, of alcohol by volume. Fortified wine constitutes liquor for distribution purposes.

(14) "Going establishment" means a business that:

(a) is open at least 20 hours per week for any four weeks in a 90-day period;

(b) maintains an inventory of at least ten cases of alcoholic beverages for each day that the establishment is open; and

(c) sells or provides a minimum of $50, calculated at cost, of alcoholic beverages each week the establishment is open.

(15) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.

(16) "Industry member" is any person engaged in business as a manufacturer, importer, or wholesaler of alcoholic beverages.

(17) "Mitigating circumstances" means a justification for a violation that the department considers extenuating enough to warrant a reduction of the penalty that would otherwise be proposed.

(18) "Original packaging" means the sealed container in which a manufacturer packages its product for retail sale. It includes bottles, cans, kegs, and growlers, but does not include lines or piping carrying product from a manufacturer's premises to a retailer's premises.

(19) "Patio/deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.

(20) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single ~~six-foot-wide~~ entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

(a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;

(b) have a portion of it be water;

(c) have additional entrances permitting public access to the patio/deck; and

(d) be less than three feet in height.

(21) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302, MCA, may include:

(a) self-propelled wheeled vehicles such as golf carts, concession vans, or similar conveyances containing beverage dispensing and storage equipment; or

(b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed, or transported to a temporary site and which contains beverage dispensing and storage equipment; and

(c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

(22) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine for sale to persons who hold liquor licenses as fixed and determined by the department.

(23) "Premises" means the area in the floor plan approved by the department on which the activities authorized under the license may be conducted.

~~(24) "Prepared-food business," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where the food is not made on-site.~~

~~(25)~~ (24) "Primary packaging" means the container that directly holds the alcoholic beverage. Examples of primary packaging include, but are not limited to, aluminum cans, glass bottles, kegs, and a box containing a plastic bladder or other soft flexible container of wine.

~~(26)~~ (25) "Purchase price" means the ordinary, dine-in menu price for beer and wine and food items.

~~(27) "Restaurant," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where food is made on-site.~~

~~(28)~~ (26) "Sale to an underage person" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.

~~(29)~~ (27) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.

~~(30)~~ (28) "Seasonal business" means a business closed for greater than 90 consecutive days due to climatic and other conditions. ~~Examples include a dude ranch, resort, or park hotel.~~

~~(31)~~ (29) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption.

~~(32)~~ (30) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

~~(33)~~ (31) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

~~(34)~~ (32) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

AUTH: 16-1-303, MCA
IMP: 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.111 to continue implementation of HB 68 through the proposed removal of (24) and (27) since all former beer licenses have been converted to an on-premises consumption retail beer and wine license, and the prior requirement to operate this license type as a prepared food business or restaurant has been removed from statute.

The department also proposes to amend the definition of "seasonal business" to implement House Bill 166 (2023) (HB 166). HB 166 removed examples of businesses that qualify for seasonal status from statute which provides the department more flexibility in approving seasonal status for licenses.

42.13.112 SEASONAL BUSINESS (1) The department may approve a license for use in a seasonal business to enable closures exceeding 90 consecutive days.

(2) To request approval, the licensee shall submit a written request that includes the:

(a) type of seasonal business;

(b) justification for operating seasonally; and

(c) general dates of operation.

(3) Once approved, a licensee shall notify the department prior to changing the general dates of operation.

(4) The time spent on seasonal status does not count towards the operational requirement provided in 16-4-417 and 16-4-432, MCA, when the business is closed.

AUTH: 16-1-303, MCA
IMP: 16-3-310, 16-4-417, 16-4-432, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity for the amendments to ARM 42.13.107 to implement HB 123, the department proposes to amend ARM 42.13.112 through proposed (4). When a license has been granted seasonal status and is closed for a portion of the year, the business is not operational and, therefore, the closure does not count towards the operational requirement found in 16-4-432, MCA.

Finally, the department proposes to add 16-4-417 and 16-4-432, MCA, as implementing citations, which is required by 2-4-305, MCA.

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) As a condition of holding a retail license, no retail licensee shall sell, offer for sale, or provide any beer, wine, or hard cider unless the label and primary packaging are in conformity with this rule and ARM 42.13.221.

(2) Alcoholic beverage products are a mature product category, restricted by law to only consumers age 21 and older and who are not intoxicated, and therefore

should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a beer, wine, or hard cider label or primary package that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling and/or primary packaging that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

(i) aerosol cans; or

~~(ii) gelatin cups;~~

~~(iii)~~ (ii) hollow candies; ~~or~~

~~(iv) mason jars that contain fruit;~~

(b) uses flavors that are designed to target or particularly appeal to underage persons, such as:

(i) cotton candy; or

(ii) bubble gum; or

(c) contains graphics or elements that:

(i) are designed to target or particularly appeal to underage persons;

(ii) minimizes, fails to identify, or disguises that the product contains alcohol; or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption; or

(d) is in powdered or crystalline form.

(3) The department will notify the winery, wine importer, brewer, or beer importer of any products that do not conform to the requirements in (2). The winery, wine importer, brewer, or beer importer must remove the product from the Montana market within 60 days of being notified by the department.

AUTH: 16-1-303, MCA
IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.201 to strike the former prohibition of beer, wine, and hard cider products in gelatin cups to implement HB 455. Under the revised law, the department may not prohibit a beer, wine, or hard cider product that is sold in gelatin cups that are shelf stable and liquid at room temperature.

The department also proposes to remove the prohibition of products in mason jars that contain fruit as this is becoming a more common practice for suppliers to package their products and has shown little public harm in other states that allow for this type of packaging.

42.13.211 PERMISSIBLE ADVERTISING (1) No licensee shall publish or cause to be published or disseminate or cause to be disseminated any advertisement of ~~liquor (distilled spirits, wine, or malt beverages)~~ alcoholic beverages unless such advertisement conforms with ARM 42.13.221.

(2) In addition to the requirements of (1), a licensee must not advertise in a manner that would be inconsistent with, or contrary to, the type of license under which the business is operated. Examples of such advertising include an on-

premises retailer advertising as a brewery, a brewery advertising an on-premises retailer, a licensee who advertises availability of alcoholic beverages that it is not authorized to possess or sell under its license or Montana law; or a concessionaire who advertises the sale and service of alcoholic beverages without attribution to the licensee.

(3) For the purpose of this rule, "advertising" means the publication, dissemination, solicitation, or circulation of visual, oral, or written communication intended for the public.

(4) The prohibited acts in this rule shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA
IMP: 16-3-103, 16-3-244, MCA

REASONABLE NECESSITY: With the recent expansion of permissible activities and relationships between alcoholic beverages licensees and third parties under statute, the department notes that there has been a steady rise in misrepresentation, deception, and false advertising involving alcoholic beverages licensees or by related third parties.

The department proposes to amend ARM 42.13.211 to curb intentional deceptive advertising practices which lead to marketplace confusion. The department contends the proposed amendments are a necessary clarification of existing federal and state law and provide additional guidance for licensees on the subject matter.

Amendment to (1) clarifies "alcoholic beverages" which is necessary for consistency with most administrative rule references to these products. Section (2) is proposed to clearly state impermissible advertising with representative examples. Proposed (3) provides a necessary definition for administration of the rule. Proposed (4) provides notifies licensees that impermissible advertising constitutes a violation under the law.

42.13.405 WINERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a winery shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its products to distributors or retailers only in original packaging;

(f) prevent the self-service of alcoholic beverages on the premises;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(i) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages, other than those sold for off-premises consumption pursuant to (3), from individuals' possession by 2 a.m.;

(j) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;

(k) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;

(l) maintain records documenting its business operations including, but not limited to the sale, production, storage, and processing of alcoholic beverages on the premises; and

(m) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A license to operate a winery is not a retail license.

(3) A winery may sell alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(a) all alcoholic beverages must be in original packaging, prepared servings, or growlers;

(b) except as provided in (c), alcoholic beverages may only be sold in an approved sample room; and

(c) use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-3-406, 16-3-411, 16-4-107, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.405(1)(b) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

The department also proposes to amend (1)(e) to reflect a statutory exception enacted by HB 97 to allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes the amendment in (3)(c) to implement and align with HB 254, which amended 16-3-312, MCA, to allow curbside orders to be ordered online, through the phone, or in person.

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a brewery shall:

(a) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(b) store alcoholic beverages only on the premises;

(c) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(d) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;

(e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its products to wholesalers and retailers only in original packaging;

(f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises; and

(g) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A license to operate a brewery is not a retail license.

(3) In addition to all other requirements, a brewery with an annual nationwide production of less than ~~100 barrels~~ 200 gallons shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) only provide samples without charge;

(c) prevent the self-service of alcoholic beverages on the premises;

(d) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(e) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold for off-premises consumption pursuant to (f);

(f) sell all alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(i) the alcoholic beverages must be sold in an approved sample room;

(ii) the alcoholic beverages must be in original packaging, prepared servings, or growlers only;

(iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.; and

(g) subject to, and in addition to the off-premises consumption sales conditions in (f), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than ~~100 barrels~~ 200 gallons or more than 60,000 barrels that operates a sample room shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) provide with or without charge no more than 48 ounces of alcoholic beverages to any individual for on-premises consumption or prepared servings through curbside pickup, including a drive-through window, during a business day;

(c) provide not more than 2,000 barrels of beer annually for on-premises consumption, including the premises of any affiliated manufacturers as defined in 16-3-213, MCA;

(d) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.;

(e) prevent the consumption or possession of alcoholic beverages on the premises between 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (h) from individuals' possession by 9 p.m.;

(f) prevent the self-service of alcoholic beverages on the premises;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) sell alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(i) the alcoholic beverages must be sold in an approved sample room;

(ii) all alcoholic beverages sold must be in original packaging, prepared servings, or growlers;

(iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.;

(iv) the sale of alcoholic beverages in prepared servings is prohibited between 8 p.m. and 10 a.m.; ~~and~~

(i) subject to, and in addition to the off-premises consumption sales conditions in (h), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone~~.~~; and

(j) for each brewery participating in a distinct beer collaboration provided in 16-3-213(4), MCA, notify the department at least seven business days prior to the collaboration and file all required reports with the department subsequent to the collaboration for tax collection purposes. For the purposes of administering 16-3-213(4), MCA, a "distinct collaboration beer" means a single beer manufactured through a single collaboration by two or more brewers. For example, if two brewers collaborate in March to make "Beer 123," that product constitutes one distinct collaboration beer. If the same two brewers collaborate to make the same beer at a later date in the year, that is considered a second distinct beer collaboration counting towards the collaborating brewers' statutory limit.

(5) In addition to all other requirements, a brewery with an annual nationwide production of 60,000 barrels or more may only sell beer in original packaging to a licensed beer distributor. Selling or providing alcoholic beverages to consumers for consumption on the premises and selling alcoholic beverages to retailers is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, 16-3-312, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.601(1)(a) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

Similar to the department's amendments to ARM 42.13.405(1)(e), the department proposes to amend (1)(e) of this rule to reflect HB 97 amendments to statute which allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes to replace the 100-barrel threshold in (3) and (4) with 200 gallons to implement the HB 97 revision to the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

Similar to the department's amendments to ARM 42.13.405, the department proposes to amend (3)(g) and (4)(i) of this rule to reflect HB 254 statutory changes which allow curbside orders to be placed online, through the phone, or in person.

The department also proposes new (4)(j) to implement Senate Bill 312 (2023) (SB 312). SB 312 allows brewers to collaborate in the manufacturing of a distinct collaboration beer to provide prior notification to the department and limits the service of the collaboration beer in a calendar year. The department proposes a seven-business-day notice requirement so it can properly notify any impacted groups ahead of the proposed activity, and also proposes to adopt a definition for "distinct collaboration beer" which the department believes is necessary for administration of this rule.

42.13.802 DISTILLERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a distillery shall:

(a) not sell, deliver, or provide any alcoholic beverages until the licensee has obtained a certificate of label approval or an exemption from label approval from the Alcohol and Tobacco Tax and Trade Bureau and product approval from the department;

(b) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its product in Montana only in original packaging and to the department; and

(f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises.

(2) A license to operate a distillery is not a retail license.

(3) In addition to all other requirements, a microdistillery shall:

(a) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law;

(b) only transfer alcoholic beverages from a manufacturing area or storage area to a sample room in original packaging;

(c) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;

(d) prevent the self-service of alcoholic beverages on the premises;

(e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;

(g) only provide alcoholic beverages to consumers at a microdistillery for on-premises or off-premises consumption that have been produced at the microdistillery. For purposes of this requirement only, an alcoholic beverage is considered to have been produced at a microdistillery only if:

(i) on a quarterly basis, at least 90 percent of the liquor provided at the microdistillery for on-premises or off-premises consumption was distilled at the microdistillery; and

(ii) all liquor provided at the microdistillery for on-premises and off-premises consumption contains alcohol that was distilled at the microdistillery;

(h) notify the department of the percentage of alcohol distilled at the microdistillery for each liquor product prior to providing the product to consumers at the microdistillery for on-premises or off-premises consumption. The microdistillery shall notify the department of any changes to the percentages on file with the department prior to providing the changed product to consumers.

(4) In addition to all other requirements, a microdistillery that operates a sample room shall:

(a) refrain from providing alcoholic beverages to consumers for on-premises consumption until a sample room is approved by the department;

(b) prevent the consumption or possession of alcoholic beverages outside of an approved sample room and any approved patio/deck;

(c) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.;

~~(c)~~ (d) prevent the consumption or possession of alcoholic beverages on the premises between ~~8~~ 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (5) from individuals' possession by ~~8~~ 9 p.m.; and

~~(d)~~ (e) regardless of the liquor product's alcohol content, provide no more than a combined total of 2 ounces of liquor products approved for labeling or exempt from labeling for on-premises consumption or prepared servings for curbside pickup to any individual during a business day.

(5) In addition to all other requirements, a microdistillery that conducts off-premises sales shall:

(a) sell alcoholic beverages only in original packaging;

(b) sell alcoholic beverages only in an approved sample room except for curbside pickup, including a drive-through window, that were ordered online, in person, or through the phone;

(c) sell no more than ~~1.75~~ 4.5 liters of liquor product approved for labeling or exempt from labeling in one day to an individual;

(d) sell alcoholic beverages for off-premises consumption only between 8 a.m. and 2 a.m.; and

(e) deliver alcoholic beverages only to the department or an agency liquor store; the delivery of alcoholic beverages to consumers off-site is prohibited.

AUTH: 16-1-303, 16-1-424, MCA
IMP: 16-1-404, 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.802(1)(b) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

Similar to the department's amendments to ARM 42.13.405(1)(e) and 42.13.601(1)(e), the department proposes to amend (1)(e) of this rule to reflect HB 97 enactments which allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes to incorporate the text in proposed (4)(c) and amend the hours referenced in proposed (4)(d) to implement HB 539 which requires distilleries to have the same sample hours as small breweries.

Similar to the department's amendments to ARM 42.13.405 and 42.13.601, the department proposes to amend (5)(b) to reflect HB 254's allowance of curbside orders to be placed online, through the phone, or in person.

Lastly, the department proposes the amendment in (5)(c) to implement an HB 539 enactment which increased the amount of liquor a distillery can sell to an individual for off-premises consumption per day from 1.75 liters to 4.5 liters.

42.13.804 MICRODISTILLERY - MONTHLY TAX RETURN (1) Each microdistillery shall electronically file with the department a monthly Excise and License Tax Return, as required by 16-1-424, MCA, reporting the following information:

(a) the total number of gallons distilled during the preceding calendar month to verify the distillery qualifies as a microdistillery based on its production level;

(b) the total number of bottles transferred to the sample room for on-premises consumption with or without charge at the distillery;

(c) the total number of bottles transferred to a colocated license at the colocated premises;

~~(c)~~ (d) the total number of bottles sold to consumers at retail for off-premises consumption;

(e) the total number of bottles donated to nonprofit and tax-exempt organizations, pursuant to 16-3-316, MCA;

(f) the total number of bottles brought to a state-allowed industry trade show pursuant to 16-1-307, MCA; and

~~(d)~~ (g) the total amount of liquor excise tax and liquor license tax due for the month being reported.

(2) All product provided to a consumer by the microdistillery must have a standard quotation and specification form on file with the department. If no form is provided to the department or, at the department's discretion, if the form provided is or appears to be incomplete or inaccurate, the department may determine the per-bottle liquor excise tax and liquor license tax that the distillery must pay. The liquor excise tax and liquor license tax will be determined by using the higher of:

(a) the retail selling price set by the microdistillery as the posted price; or

(b) an average cost for products within the same category and size by other domestic distilleries that sell product to the department.

(3) The department will notify the microdistillery of the posted price per bottle, the per-bottle liquor excise tax, and the liquor license tax amounts as determined in (2).

(4) The return must be accompanied by payment of the tax pursuant to 16-1-424, MCA, on or before the 15th day of each month for liquor sold during the previous month.

AUTH: 16-1-303, 16-1-424, MCA
IMP: 16-1-404, 16-1-424, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.804 to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, which permits an ownership interest in both a manufacturing license and a retail license under certain conditions, allows a manufacturer and retailer with complete ownership to be colocated in the same premises, and allows for the transfer of product between the two licenses.

The department proposes (1)(c) to clarify that when product is transferred at a colocated premises, the microdistillery is still responsible for paying the taxes on the product.

Similar to the department's other proposals and necessity for rulemaking stated above, the department proposes (1)(e) to implement the HB 95 allowance for manufacturers to donate alcoholic beverage to nonprofits and tax-exempt organizations and to clarify that a microdistillery is still responsible for paying the taxes on donated product.

The department proposes the amendment in (1)(f) to require reporting of alcoholic beverage inventory brought to an industry trade show, described in 16-1-307, MCA, as enacted under HB 120, and provided in ARM 42.12.150.

42.13.901 DEFINITIONS The following definitions apply to this subchapter:

(1) "Acceptable forms of identification" include:

(a) state driver license or identification card;

(b) Canadian driver license or identification card;

(c) passport;

(d) tribal identification card; and

(e) any form of government-issued identification whether issued digitally or in a hard-copy version.

(2) "Combined exam score" means the overall score of an exam administered by a private training provider where the Montana portion of the exam is weighted as 50 percent of the overall exam score.

(3) "House policies" means a company policy that dictates how a certain situation, activity, or process should be handled.

(4) "Incident log" means a document that tracks situations occurring on the licensed premises.

(5) "Private training provider" means a private business that provides responsible alcohol sales and service training using a program that is approved by the department.

(6) "Proof of training document" means a document stating the program name, training date, participant's name, and participant's date of birth, that is issued to a participant who obtained a score of 80 percent or more on the exam.

(7) "State trainer" means an individual that is approved by the department to provide responsible alcohol sales and service training using the department's curriculum.

(8) "Training records" means records submitted to the department by a private training provider that include the program name, training date, whether training was online or in person, and each participant's name, date of birth, and combined exam score.

AUTH: 16-4-1009, MCA
IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes to amend the definition of "acceptable forms of identification" in ARM 42.13.901(1) because numerous states have authorized an individual's use of either a digital or hard-copy version of their driver's license and alcoholic beverages licensees and their employees often validate an individual's age to purchase alcoholic beverages via their driver's license.

While the Montana Legislature enacted House Bill 519 (2023) (HB 519) to implement digital driver's license changes to 61-5-116, MCA, HB 519 is not effective until September 1, 2025. Independent of HB 519, the department believes the proposed amendment is necessary, reflects a change in the modernization of identification, and lies within the department's authority under 16-1-303, MCA, to allow licensees to accept valid issuance of digital identification.

42.13.1002 ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) An alternating proprietor arrangement occurs when a tenant manufacturer utilizes the licensed premises and equipment of a host manufacturer to produce and/or package alcoholic beverages.

(2) The tenant must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The tenant and host must seek the department's approval for each alternating proprietor arrangement necessitating approval by the Alcohol and Tobacco Tax and Trade Bureau.

(4) To apply, the tenant and host shall submit a complete application to the department that includes:

(a) documentation of Alcohol and Tobacco Tax and Trade Bureau approval;

(b) a description of the areas and equipment to be used by the tenant;

(c) a copy of the host's floor plan identifying the areas to be used by the tenant; and

(d) a copy of the executed agreement between the tenant and host.

(5) The department shall notify the tenant and host in writing of its approval or denial of the alternating proprietor arrangement within 15 business days of receiving all requested information.

(6) The tenant and host shall notify the department in writing within ten business days of receiving notice from the Alcohol and Tobacco Tax and Trade Bureau that approval for an existing alternating proprietor arrangement has been revoked.

(7) All regulations set forth in Title 27 of the Code of Federal Regulations, in effect on October 5, 2015, addressing alternating proprietor arrangements are adopted by reference, except where the provisions of those regulations may be contrary to or inconsistent with the provisions of Montana law or department rule. Copies may be obtained from the United States Treasury at www.ttb.gov. Failure to comply with those regulations shall constitute a violation of this rule and may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

(8) The tenant shall maintain possession, title, and control over all raw materials and its product on the host's premises.

(9) The tenant's product must be separate and identifiable from the products of all other tenants and the host at all stages of production and through removal of the product from the host's premises.

(10) The tenant and host shall keep separate records of their respective production and removals. The department may make an examination of any records kept by the tenant and host.

(11) The host is prohibited from selling, providing, or distributing the tenant's product, with or without charge, in the host's sample room, on its licensed premises, or elsewhere.

(12) The tenant must adhere to all applicable distribution requirements set forth in the Montana Alcoholic Beverage Code.

(13) In addition to all other requirements imposed by this rule, where the tenant is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the tenant; and

(ii) the tenant shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 60,000-barrel production cap in 16-3-213 and 16-3-214, MCA, all beer produced by a tenant at a host's premises shall be considered as part of the tenant's annual nationwide production; and

(c) a tenant with an annual nationwide production between ~~100~~ 200 gallons and 60,000 barrels may provide, with or without charge, beer in its sample room only

if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a tenant providing beer in its sample room that was brewed or fermented at a host's premises. A tenant that brewed and fermented beer at its premises and packaged the beer at a host's premises may provide that beer, with or without charge, in the tenant's sample room.

(14) In addition to all other requirements imposed by this rule, where the tenant is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the tenant; and

(ii) the tenant shall pay the tax due on wine sold directly to consumers and retailers; and

(b) a tenant may provide, with or without charge, wine for consumption on its licensed premises that was produced and/or packaged at its premises or a host's premises.

(15) In addition to all other requirements imposed by this rule, where the tenant is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a tenant at a host's premises shall be considered liquor produced by the tenant; and

(c) a tenant distillery with an annual production of 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a tenant distillery providing liquor in its sample room that was produced at a host's premises, subject to the production exception in ARM 42.13.802.

(16) When the host manufacturer's licensed premises is a colocated premises, as allowed in 16-4-401, MCA, the tenant manufacturer may only utilize the manufacturing area. Retail sales by the tenant manufacturer on the host manufacturer's premises are prohibited.

~~(16)~~ (17) An alternating proprietor arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

AUTH: 16-1-201, 16-1-303, MCA
IMP: 16-1-201, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: Similar to the department's proposed amendments and justification for ARM 42.13.601, the department proposes to amend ARM 42.13.1002(13)(c) to implement HB 97's amendment to 16-3-213, MCA, which revised the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

The department also proposes the inclusion of proposed (16) to establish suitability requirements for colocated premises and aligns with the Alcoholic Beverage Code and the department's existing administrative rules.

42.13.1003 CONTRACT MANUFACTURING (1) Contract manufacturing occurs when a manufacturer utilizes its licensed premises and equipment to produce and/or package alcoholic beverages for another manufacturer to sell, called the client.

(2) The contract manufacturer and the client must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The contract manufacturer and client must seek the department's approval prior to engaging in a contract manufacturing arrangement. To apply, the contract manufacturer and client shall submit a complete application to the department.

(4) The department shall notify the contract manufacturer and client in writing of its approval or denial of the contract manufacturing arrangement within 15 business days of receiving all requested information.

(5) The sale and distribution of alcoholic beverages manufactured by the contract manufacturer may only be conducted as follows:

(a) a contract manufacturer is prohibited from selling, providing, or distributing the product, with or without charge, in the contract manufacturer's sample room, on its licensed premises, or elsewhere;

(b) the contract manufacturer may only sell the product to the client; and

(c) once the client holds title to the product, the client must adhere to all applicable distribution requirements in the Montana Alcoholic Beverage Code, the same as though the client produced the product.

(6) The contract manufacturer and client shall maintain control over their separate business records at all times. The department may make an examination of the records of the contract manufacturer or client.

(7) In addition to all other requirements imposed by this rule, where the client is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the client; and

(iii) the client shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 60,000-barrel production cap set forth in 16-3-213 and 16-3-214, MCA, all beer produced by the contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual nationwide production between ~~100~~ 200 gallons and 60,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a client providing beer in its sample room that was brewed or fermented at a contract manufacturer's premises. A client that brewed and fermented beer at its premises and then had the beer packaged at a contract

manufacturer's premises may provide that beer, with or without charge, in the client's sample room.

(8) In addition to all other requirements imposed by this rule, where the client is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the client; and

(ii) the client shall pay the tax due on wine sold directly to consumers and retailers; and

(b) the client may provide, with or without charge, wine for consumption on its licensed premises only if the wine was produced by the client. This restriction includes a prohibition against the client providing wine that was produced by a contract manufacturer. A client that produced the wine at its premises and then had the wine packaged at a contract manufacturer's premises may provide that wine, with or without charge, for consumption on its licensed premises.

(9) In addition to all other requirements imposed by this rule, where the client is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual production of 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a client providing liquor in its sample room that was produced at a contract manufacturer's premises, subject to the production exception in ARM 42.13.802.

(10) Except as provided in (11), a contract manufacturing arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the contract manufacturer and client to administrative action, including revocation of their manufacturing licenses.

(11) The department may approve a contract manufacturing arrangement that does not fit within the bounds of this rule only if the proposed arrangement is not prohibited by federal and state alcoholic beverage regulations. This may include a contract manufacturing arrangement where the client is not located in Montana.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: Similar to the department's proposed amendments and necessity for ARM 42.13.601 and 42.13.1002, the department proposes to amend ARM 42.13.1003(7)(c) to implement HB 97's revision to 16-3-213, MCA, which revised the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

42.13.1102 ALL-BEVERAGES LICENSE - CONDITIONS FOR OPERATING

(1) In addition to all other alcoholic beverage licensing requirements, an all-beverages licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-213, 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA~~, and described in (5)~~;

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility, as applicable;

(c) offer liquor, beer, and wine for on-premises consumption;

(d) prevent the self-service of alcoholic beverages on the premises;

(e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging, prepared servings, or growlers for off-premises consumption, except as described in (5).

(2) An all-beverages licensee may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) alcoholic beverages must be sold in original packaging, prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and

(b) the sale of alcoholic beverages must occur on the premises, except as provided in (3) and (4).

(3) An all-beverages licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

(4) An all-beverages licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is $200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging. The delivery of liquor is prohibited;

(c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(5) ~~An all-beverages licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.~~ An all-beverages licensee may purchase up to a total of six gallons of beer or table wine per day from in-state licensed retailers. The licensee shall maintain records for any beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date of purchase;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the retailer from whom the beer or table wine was purchased.

(6) An all-beverages licensee may allow a customer to take a partially consumed bottle of table wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

(7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-4-213, 16-4-405, 16-6-303, 16-6-306, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1102 to implement changes to 16-4-404(7), MCA, enacted under House Bill 71 (2023) (HB 71); 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 permits curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes the amendment in (3) to implement HB 254 and for consistency with 16-3-312, MCA, as amended.

The department proposes to remove the first sentence in (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls, and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

42.13.1103 RESTAURANT BEER AND WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a restaurant beer and wine licensee shall:

(a) only purchase and possess on the premises fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-404(7), and 16-6-306(3), MCA~~, and described in (5)~~;

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) offer beer and wine for on-premises consumption;

(d) serve beer and wine only to patrons who order food;

(e) state alcoholic beverage sales on the food bill;

(f) obtain at least 65 percent of its annual gross income from the sale of food, excluding the sale of nonalcoholic beverages;

(g) prevent the self-service of alcoholic beverages on the premises;

(h) prevent the sale of alcoholic beverages between 11 p.m. and 11 a.m.;

(i) prevent the consumption or possession of alcoholic beverages on the premises between 11 p.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 11 p.m. other than those sold for off-premises consumption pursuant to (2);

(j) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(k) prevent the consumption of alcoholic beverages that were not purchased at the premises, except as described in (5).

(2) A restaurant beer and wine licensee may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) food must be included in the purchase and the alcoholic beverages stated on the customer's bill;

(b) alcoholic beverages must be sold in original packaging, prepared servings, or growlers filled at the time of sale; and

(c) the sale of alcoholic beverages must occur on the premises, except for curbside pickup, including a drive-through window, that were ordered online, in person, or through the phone.

(3) A restaurant beer and wine licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is $200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging;

(c) the delivery must include food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(4) In addition to the requirements in (1) through (3), any restaurant for which a restaurant beer and wine license was not in effect as of April 9, 2009, shall:

(a) serve an evening dinner meal at least four days a week for at least two hours a day between 5 p.m. and 11 p.m.; and

(b) sell the majority of its food and drinks, excluding any carry-out business, in nondisposable containers.

(5) ~~A restaurant beer and wine licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.~~ A restaurant beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date the beer or table wine was purchased;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the in-state retailer from whom the beer or table wine was purchased.

(6) A restaurant beer and wine licensee may allow a customer to take partially consumed bottles of wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

(7) If a licensee leases or subleases its kitchen, or another specified area, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

(8) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements stated in 16-4-420, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-305, 16-3-311, 16-3-312, 16-4-405, 16-4-420, 16-6-306, MCA

REASONABLE NECESSITY: The department propose to amend ARM 42.13.1103 to implement changes to 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 permits curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes the amendment in (2)(c) to implement HB 254 and for consistency with 16-3-312, MCA, as amended.

The department proposes to remove the first sentence in (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify for licensees the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

The department proposes the addition of new (8) because 16-3-311, MCA, as amended, did not override the specific requirements provided in 16-4-420, MCA, for operating a restaurant and the rule section is a necessary notification for this license type.

42.13.1104 ON-PREMISES CONSUMPTION BEER AND WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an on-premises consumption beer and wine licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler or brewery, fortified wine from an agency liquor store, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA~~, and described in (6)~~;

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) offer beer and wine for on-premises consumption;

(d) prevent the self-service of alcoholic beverages on the premises;

(e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m., by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to ~~(3)~~ (2) from individuals' possession by 2 a.m.;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold for off-premises consumption pursuant to ~~(3)~~ (2).

~~(2) In addition to the requirements and exceptions in (1), an on-premises consumption beer licensee with a wine amendment shall:~~

~~(a) only purchase and possess on the premises fortified wine from an agency liquor store and table wine from a table wine distributor or winery, except as described in (6);~~

~~(b) offer wine for on-premises consumption; and~~

~~(c) operate a restaurant or prepared-food business on the premises.~~

~~(3)~~ (2) An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) alcoholic beverages must be sold in original packaging, prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and

(b) except as provided in ~~(5)~~ (4) and ~~(6)~~ (5), the sale of alcoholic beverages must occur on the premises.

~~(4)~~ (3) An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

~~(5)~~ (4) An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is $200;

(b) alcoholic beverage delivery is limited to beer and wine ~~- depending on the license amendment -~~ in original packaging;

(c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine ~~- depending on the license amendment -~~ may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

~~(6)~~ (5) ~~An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.~~ An on-premises consumption beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date the beer or table wine was purchased;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the retailer from whom the beer or table wine was purchased.

(6) An on-premises consumption beer and wine licensee may allow a customer to take partially consumed bottles of wine with them to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

(7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-3-411, 16-4-104, 16-4-105, 16-4-405, 16-6-306, MCA

REASONABLE NECESSITY: The department propose to amend ARM 42.13.1104 to implement changes to 16-4-105, MCA, enacted under HB 68; 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 68 removed the optional wine amendment to a retail on-premises consumption beer license that was provided in 16-4-105, MCA, and all licenses are an on-premises consumption retail beer and wine license. HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 amended 16-3-312, MCA, to allow curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

To implement HB 68, the department must amend the catchphrase of the rule, amend all internal references to the license type, and remove text that pertained to wine amendments to align the rule with the revised statute.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes an amendment in proposed (3) to implement HB 254 for consistency with the statute.

The department proposes to remove the first sentence in proposed (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into proposed (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify for licensees the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes new (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

42.13.1105 OFF-PREMISES CONSUMPTION BEER AND TABLE WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an off-premises consumption beer and table wine licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler or brewery and table wine from a table wine distributor or winery except as permitted under 16-3-301(8) and 16-4-404(7), MCA;

(b) store beer and/or table wine only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) sell beer and/or table wine for off-premises consumption only in their original packages;

(d) operate as a stand-alone beer and/or table wine business, grocery store, or drugstore licensed as a pharmacy; and

(e) prevent the sale of alcoholic beverages between 2 a.m. and 8 a.m.

(2) The sale of alcoholic beverages must occur on the premises. An off-premises consumption beer and/or table wine licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

(3) In addition to the requirements in (1), an off-premises consumption beer and/or table wine licensee that operates in a grocery store shall maintain groceries with a retail value of at least $3,000 at all times. The inventory must include at least three different types of items in each of the following categories: meats, vegetables, fruits, baked goods, dairy, and household supplies. For example, three different types of items in the dairy category would be cheese, milk, and butter, but skim milk,

chocolate milk, and whole milk would not be considered as three different types of items in the dairy category.

(4) The delivery of alcoholic beverages by an off-premises consumption beer and table wine licensee to the consumer off-site is prohibited.

(5) An off-premises consumption beer and/or table wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date the beer or table wine was purchased;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the retailer from whom the beer or table wine was purchased.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1105 which is necessary to implement changes to 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

The department's proposed amendments to (1)(a) are necessary for HB 71 implementation.

The department proposes an amendment in (2) to implement HB 254 for consistency with the statute.

The department proposes to add HB 539 changes to 16-3-301, MCA, into proposed (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

42.13.1202 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a beer wholesaler and table wine distributor shall:

(a) maintain a fixed place of business, sufficient capital, and the facilities, storehouse, receiving house, or warehouse for the receiving, storing, and handling of beer, table wine, and sacramental wine in large quantities for distribution and sale;

(b) receive beer, table wine, and sacramental wine from an importer, brewery, winery, wholesaler, or distributor only if:

(i) the importer, brewery, winery, wholesaler, or distributor is licensed by or registered with the department;

(ii) all product labels have been approved by the department; and

(iii) an agreement of distributorship agreement is in place between the manufacturer or importer and the wholesaler or distributor and has been filed with the department in accordance with 16-3-226 and 16-3-416, MCA;

(c) store beer, table wine, and sacramental wine only on the licensed premises ~~of its principal place of business~~ or the premises of its licensed subwarehouse;

(d) except as provided in 16-3-219 and 16-3-418, MCA, deliver alcoholic beverages using its own employees, trucks, and equipment;

(e) sell beer, table wine, and sacramental wine only in its original packaging;

(f) sell and deliver beer, table wine, and sacramental wine under its Montana license only to the premises of other licensed wholesalers or distributors, licensed alcoholic beverage retailers, agency liquor stores, or to the location of catered events of a licensed alcoholic beverage retailer, ~~agency liquor stores,~~ special events for a special permit holder, ~~and~~ approved noncontiguous alcoholic beverage storage areas or resort alternate alcoholic beverage storage facilities, or under a department-approved delivery arrangement, as provided in 16-3-219, MCA. This does not in any way prohibit the licensee from operating in compliance with other state or federal law;

(g) prevent the consumption of alcoholic beverages on the licensed premises ~~of its principal place of business~~ and the premises of any licensed subwarehouse;

(h) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business; and

(i) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A beer wholesaler and/or table wine distributor shall only sell product under a bona fide sale. It shall not sell product on consignment, under conditional sale, with the privilege of return, or in a sale involving acquisition of other products.

(3) A beer wholesaler and/or table wine distributor shall only exchange or accept product returned from an alcoholic beverage retailer, wholesaler, or distributor for ordinary and usual commercial reasons, such as defective product, a delivery error, and discontinued product or business. It shall not accept product returned based upon the product being overstocked, slow moving, or seasonal.

AUTH: 16-1-303, MCA
IMP: 16-3-212, 16-3-219, 16-3-231, 16-3-232, 16-3-242, 16-3-301, 16-3-404, 16-3-406, 16-3-418, 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1202 which is necessary to implement the statutory changes to 16-3-226, 16-3-416, and 16-3-420, MCA, enacted under House Bill 49 (2023) (HB 49), and the amendments enacted under HB 155. HB 49 requires wholesalers or distributors to file all agreements of distributorship between them and a brewer, beer importer, winery, or wine importer. HB 155 revised general terminology in Title 16, chapter 4, MCA, to a more current vernacular.

Based on the HB 49 requirements, the department proposes an amendment to (1)(b)(iii) for clarity that aligns the rule to the revised statute. The department proposes to amend (1)(c) and (1)(g) to reflect the location of a wholesaler or table wine distributor's business as a premises and not principal place of business for consistency with HB 155.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., June 17, 2024.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor(s) of House Bills 31, 43, 48, 49, 50, 68, 69, 70, 71, 72, 95, 96, 97, 98, 120, 123, 124, 127, 144, 145, 155, 157, 164, 166, 242, 254, 305, 455, 539, 578, 579, 783, and 867 and Senate Bills 20, 21, 59, 63, 75, 209, 264, and 312 were contacted by email on March 25, 2024 and again on April 12, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department through the implementation of the pertinent legislation described in this rulemaking.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.26.311 and the repeal of ARM 42.26.306 pertaining to Tax Haven Corporation Water's Edge Filing Requirements to Implement Senate Bill 246 (2023)	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 21, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on May 3, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.26.311 CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) through (4) remain the same.

~~(5) A corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven is included in a water's-edge return.~~

AUTH: 15-31-501, MCA
IMP: 15-31-322, MCA

4. The department proposes to repeal the following rule:

42.26.306 APPLICABILITY

AUTH: 15-31-501, MCA
IMP: 15-31-322, MCA

REASONABLE NECESSITY: The 68th Montana Legislature enacted Senate Bill 246 (SB 246). SB 246 amended 15-31-322(1)(f), MCA, to eliminate the required inclusion of income and apportionment factors from corporations in a unitary

relationship with the taxpayer incorporated in a tax haven in a water's edge return. Based on the enactment, it is necessary for the department to strike ARM 42.26.311(5) and to repeal ARM 42.26.306, since they are now obsolete.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., May 28, 2024.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor of SB 246, Senator Daniel Zolnikov, was contacted by email on November 14, 2023, and on April 15, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3814 and 8.94.3815 pertaining to the submission and review of applications for funding under the Montana Coal Endowment Program (MCEP)	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 8, 2024, the Department of Commerce published MAR Notice No. 8-94-211 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 358 of the 2024 Montana Administrative Register, Issue Number 5.

2. The department has amended the above-stated rules as proposed.

3. The department has considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

Comment 1: A comment was received regarding small Montana communities not having the capacity to quickly turn around draft meeting minutes to be available for the next commission/council meeting agenda. Applications should not be scored less because of this. Rural local governments have less staff and meet less frequently than larger communities. Again, this scoring item inappropriately negatively impacts the most rural Montana communities.

Response 1: Expectation that documents submitted are finalized and signed by local governments in all submitted documents creates an even playing field for all applicants to compete with each other in the analysis process.

Comment 2: A commenter requested that a match not be required for grants to smaller communities and that grant funds are not dispersed on a reimbursement basis.

Response 2: Because the event award is limited to $25,000 for defined allowed expenses, no match is required for this funding opportunity. Most of the permissible expenses will be incurred close to or at the time of the event, and event deliverables must be submitted to the department within 30 days. Grantees who submit deliverables within the contractual term should not incur large out-of-pocket expenses before grant funds are distributed.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.17.119, 24.17.120, 24.17.121, and 24.17.122 pertaining to prevailing wage rate adoption	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 8, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-17-413 regarding the public hearing on the proposed changes to the above-stated rules, at page 394 of the 2024 Montana Administrative Register, Issue No. 5.

2. On March 28, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.17.119, 24.17.120, 24.17.121, and 24.17.122 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV pertaining to SUD voucher programs	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 23, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1040 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 306 of the 2024 Montana Administrative Register, Issue Number 4.

2. The department has adopted the above-stated rules as proposed: NEW RULE I (37.27.201), NEW RULE II (37.27.202), NEW RULE III (37.27.203), and NEW RULE IV (37.27.204).

3. No comments or testimony were received.

4. The department intends to apply these rule adoptions retroactively to July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.3005 pertaining to congregate living reimbursement rates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 23, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1063 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 324 of the 2024 Montana Administrative Register, Issue Number 4.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 16, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2023. This table includes notices in which those rules adopted during the period November 3, 2023, through April 12, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 or 2024 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in March 2024 appear. Potential vacancies from May 1, 2024 through May 31, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR MARCH 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Barbers and Cosmetologists			
Ms. Katie Fontana	Governor	Reappointed	3/1/2024
Great Falls			7/1/2027
Qualifications (if required): Public Member			
Motorcycle Safety Advisory Commission			
Mr. Aleric Hebert	Governor	Loewen	3/4/2024
Great Falls			7/1/2027
Qualifications (if required): Motorcycle Riding Group Representative			
State Workforce Innovation Board (SWIB)			
Ms. Jennifer Cronk	Governor	Etzwiler	3/4/2024
Kalispell			7/1/2025
Qualifications (if required): Business Representative			

EXECUTIVE BRANCH VACANCIES – MAY 1, 2024 THROUGH MAY 31, 2024

Board/Current Position Holder	Appointed By	Term End
Agricultural Land Valuation Advisory Committee		
Mr. Eric Moore, Miles City	Governor	5/31/2024
Qualifications (if required): Person knowledgeable in agricultural economics		
Mr. Todd Olson, Lewistown	Governor	5/31/2024
Qualifications (if required): Person knowledgeable in agricultural economics		
Ms. Gina Stevens, Hardin	Governor	5/31/2024
Qualifications (if required): Person knowledgeable in agricultural economics		
Board of Outfitters		
Mr. Wagner Harmon, Bainville	Governor	5/31/2024
Qualifications (if required): Outfitter representing a private land hunting outfit		
Mr. Chris Gentry, Ennis	Governor	5/31/2024
Qualifications (if required): Montana-based business owner reliant on outdoor recreation industry		
Board of Plumbers		
Mr. Jeffery A. Gruizenga, Billings	Governor	5/1/2024
Qualifications (if required): Registered Professional Engineer		
Board of Real Estate Appraisers		
Mr. Gregory Thornquist, Helena	Governor	5/1/2024
Qualifications (if required): Licensed or Certified Real Estate Appraiser		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2024 THROUGH MAY 31, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Realty Regulation		
Ms. Julie Lingle Gardner, Missoula	Governor	5/1/2024
Qualifications (if required): Licensed real estate broker, salesperson, or property manager		
Commission on Community Service		
Mr. Jim Swan, Box Elder	Governor	5/31/2024
Qualifications (if required): Tribal government representative		
Ms. Morgan Hubbard, Forsyth	Governor	5/31/2024
Qualifications (if required): Youth representative		
Ms. Kelly Ackerman, Helena	Governor	5/31/2024
Qualifications (if required): Agency representative		
Mr. Thomas Risberg, Great Falls	Governor	5/31/2024
Qualifications (if required): Community based organization representative		
Montana Wheat and Barley Committee		
Ms. Denise Conover, Broadview	Governor	5/31/2024
Qualifications (if required): Independent member from District VI		
Mr. Charles Bumgarner, Great Falls	Governor	5/31/2024
Qualifications (if required): Republican member from District V		
Mr. Terry Angvick, Plentywood	Governor	5/31/2024
Qualifications (if required): Independent from District I		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2024 THROUGH MAY 31, 2024

Board/Current Position Holder	Appointed By	Term End
State Library Commission		
Ms. Robyn Scribner, Geraldine Qualifications (if required): Public representative	Governor	5/31/2024
Ms. Kristin Kerr, Helena Qualifications (if required): Public representative	Governor	5/31/2024

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620